

APPENDIX V.

(LETTER FROM THE REPRESENTATIVES OF VIRGINIA, IN THE
CHESAPEAKE AND OHIO CANAL CO.)

Washington, 19th July, 1843.

DEAR SIR,—Having but this moment had an interview with our mutual friend, Mr. M. St. Clair Clarke, and had from him a confirmation of a newspaper notice which met my eye yesterday, in regard to your arrangement for the prosecution of the Chesapeake and Ohio Canal. I cannot refrain, although it has not been my pleasure to have your personal acquaintance, to express to you the great gratification I have felt at hearing of the successful termination of your indefatigable efforts, towards the attainment of an object so momentous in its operation upon the interests, not only of those holding a pecuniary stake in the work, and of those who are to derive advantage from the immense trade to be brought into operation by it, but which may fairly be viewed as of vast national concern—by the conclusion of a contract so well calculated to impart general satisfaction to all concerned.

I heartily congratulate you, sir, upon what you have thus been able to accomplish, and hope (as indeed, I am sure it must,) that it will be hailed by all with joy and gratulation, as affording so bright a prospect of a speedy realization of what they have so long hoped for.

* * * * *

With very high respect,

I have the honor to be,

Your obedient servant,

Signed, R. C. MASON.

Gen'l. WM. G. McNEILL,

President Ches. & Ohio Canal Co.

BY THE HOUSE OF DELEGATES,
February 5, 1844.

Read and ordered to be printed.

REPORT
OF THE
AGENTS REPRESENTING THE STATE
IN
JOINT STOCK COMPANIES,
TO THE
LEGISLATURE OF MARYLAND.

IN WHICH THE REPORT OF COLONEL J. J. ABERT, ON MATTERS
CONNECTED WITH THE CHES. & OHIO CANAL COMPANY, IS
REVIEWED AND ANSWERED.

R E P O R T .

To the Honorable

The General Assembly of Maryland :

By the act of assembly providing for the appointment of agents, to represent the State in joint stock companies in which the State is interested, it is made the duty of the agents, or such of them as shall attend and be present at the stockholders meetings, to keep a correct journal of the proceedings, and to report the same to the legislature, with such remarks thereon, as may seem to them expedient, to afford the legislature a full and satisfactory knowledge of the manner in which such proceedings have been conducted.

In compliance with the requirements of this provision, the undersigned agents of the State, respectfully report to your honorable body the proceedings of the Chesapeake and Ohio Canal Company, in the general meetings of which they represented the State during the past year.

The total monied subscription to the capital stock of this company amounts to the sum of \$8,359,400, of which the State of Maryland has subscribed \$5,000,000. Nearly two-thirds of the capital stock of said company therefore, belongs to this State, and the agents appointed to represent the State in the general meetings thereof, must consequently by their votes controul its action. The responsibility resulting from this State of things, imposes a corresponding vigilance on the part of the representatives of Maryland in the management of the affairs of the company, and requires them to guard and maintain with firmness and according to their best judgement, the rights and interests of the State, as connected with the work which that company has in charge. During the past year, as heretofore, since we have occupied the positions we now hold under the appointment of the legislature, we have scrupulously endeavored to discharge our duty, and our whole duty in this behalf. In the appendix to this report marked No. 4, we present a correct journal of the proceedings of the stockholders of the Chesapeake and Ohio Canal Company at the several meetings held in the year 1843. The first was the regular annual meeting of the 5th of June. The second an adjourned general meeting held on the 6th of July, and the third an adjourned general meet-

ing held on the 16th and 17th of August. The journal of proceedings thus exhibited, which we respectfully ask to be taken and considered as a part of this communication, is full and explicit, and embodying as it does the report of the directors of the company, which was submitted to the meeting of the stockholders on the 17th of August last, explanatory of their reasons for annulling the contract which had been previously signed by the late President of the company, in the name of the company, and sealed with its corporate seal without their assent, we should probably have forborne any further comment on the action of the company in that behalf were it not for the anomalous and extraordinary production which has recently been laid before your honorable body in relation to that subject. We need scarcely say, that we allude to the document which appears to be addressed to the Secretary of the Treasury of the United States, by Col. J. J. Abert, who represented the stock of the General Government, at the last meeting above mentioned, and which has found its way into the Hall of the House of Delegates of Maryland, as a part of a communication made to the Executive, by General McNeill. From all the circumstances connected with the subject, we are constrained to believe that it has now reached its original destination. This manifestation of zeal on the part of the representative of the United States in the meeting of the canal company, *for the interest of the State of Maryland*, would be commendable, if it were sincere, but it betrays too much of the ill feeling growing out of disappointed purposes, and exhibits too much the spirit of a partizan to entitle it to such consideration. The effort, so long, and so elaborate in its details, is nothing more than an attempt to cast censure on the agents of the State of Maryland, for the course they have felt themselves imperatively called upon to pursue in regard to Col. Abert's friend. This report, as we shall hereafter call it, we have now for the first time seen. We knew nothing of its existence until we saw from the newspapers that it had been presented to the House of Delegates, and by the courtesy of a friend we yesterday obtained a printed copy. Without further preface, we shall therefore, proceed to examine its statements, and expose what we consider to be its fallacies and misrepresentations.

Col. Abert, sets out with the assertion that "refusing a committee of reference, refusing this application from the president of the company for a committee, and that he might be heard in his defence, the agents of one of the old thirteen pronounced judgement, condemned and punished a distinguished man, in the most precipitate way, and upon no other evidence, statement or representation than that which had been furnished the night before by his accusers, and themselves a party involved in the matter. Against such a preceeding I felt it my duty to protest. It mattered not whether upon the merits of the case the president of the company were right or wrong,—the proceedings were harsh, tyrannical, precipitate and in opposition to all received axioms of civil liberty, and of private right—and against such proceedings, I felt it my duty to protest."

'This is strong language, and if true would justly render us liable to your censure but "mark how plain a tale will put him down."

The substance of the allegation is that Gen. McNeill, was removed without being previously informed of the charge which had been made against him, and without being allowed an opportunity of defending himself. But what are the facts of the case.

The contract with Messrs. Letson and Rutter, was entered into by Gen. McNeill, and bears date on the 13th day of July, 1843. It was immediately, and contrary to all usage, published at length in one of the Baltimore papers, as the contract of the Chesapeake and Ohio Canal Company. On the 20th of July, the board of President and Directors, met according to adjournment, at the office of the company, in Frederick, and Gen. McNeill, as president of the company, presented to them the original of the contract, which he at the same time informed the board had been "signed, sealed and delivered." The board, therefore, passed an order, requesting him to state in writing the ground of authority upon which he had thus acted, which was accordingly *then done*. The board of directors, (Gen. McNeill having retired in the mean time,) then took up the subject, and after mature deliberation, they unanimously adopted a preamble and resolutions, in which it was declared that the power to agree with any person or persons, to cut canals, &c., is by the charter of the Chesapeake and Ohio Canal Company, conferred exclusively on the "*President and Directors, or a majority of them assembled.*" That Gen. McNeill in signing as President, and sealing with the corporate seal of the company, the articles of agreement with Thomas W. Letson and John Rutter, did so of his own mere motion, without their sanction or assent, and contrary to their previously recorded opinions on the subject; and after then detailing specifically, and at considerable length, the reasons why they objected to the terms and provisions of said contract which are stated, and appear to be substantially the same as those which were expressly rejected by the board, the directors concluded their proceedings with the following resolutions:

"*Resolved*, That the President of this company in signing in his official capacity the said articles of agreement, purporting to have been entered into on the thirteenth day of July, 1843, by and between the Chesapeake and Ohio Canal Company, of the first part and Thomas W. Letson and John Rutter, of the second part, and in affixing thereto the common corporate seal of the Chesapeake and Ohio Canal Company, *has assumed upon himself, power and authority, not granted by the charter or by-laws of the company, nor authorised by any act or proceedings of this board*

"*Resolved*, That the said article of agreement and contract be, and the same are hereby disaffirmed by this board and declared to be null and void.

"*Resolved*, That a copy of the foregoing preamble and resolutions be furnished by the clerk to Thomas W. Letson and John Rutter, with a request that they deliver up the said articles of agreement, to be cancelled.

“Resolved, That the clerk be authorised to furnish a copy of the foregoing proceedings for publication.”

The whole of the proceedings above mentioned and referred to, will be found in Appendix (No. 10) of the report of the directors of the company, which was made to the stockholders, on the 17th of August, and which is herewith exhibited. It will be observed that these proceedings were adopted by the board on the 20th of July, and that Gen. McNeill attended the meeting on that occasion. The journal of the board also shows, that he was present on the following day, when the said proceedings were read by the clerk, as usual, previous to the adjournment. On application being made, a copy of them was furnished to the Editor of the Frederick Herald, who published them at length, in his paper of the 22nd of July, and they were thence copied into nearly all of the public prints of the State. Doubtless every member of your honorable body, is cognizant of this fact. And furthermore, on the 7th of August, William Price, Esq., of Cumberland, one of the board of directors, published an address to the people of Allegany, giving a detailed statement of the circumstances, under which said articles of agreement were entered into, and the reasons why they were annulled. Such was the condition of affairs, when the stockholders met in adjourned general meeting on the 16th August last. The contract had been declared void. The reasons given by the directors for annulling it had gone the rounds of the newspapers of the State. The resolution declaring that the late president in executing the contract, “had assumed upon himself power and authority not granted by the charter of the company, nor authorised by any act or proceeding of the board,” was familiar to every reading member of the community. It was well known, for such had been the order of the previous adjournment, and notice of which had also been given in the newspapers, that the stockholders were to hold a meeting on the 16th of August. And it was equally well known that this subject must demand their consideration and require their action. The friends of the late president of the company, had had the matter before them for nearly a month, and they attended the meeting with unusual punctuality. The persons in attendance and the stock represented in the meeting, will be seen by reference to the journal of proceedings, of the 16th and 17th August, herewith exhibited. On the part of the State of Maryland, the undersigned, together with W. U. Purnell, Esq., who is prevented by sickness in his family from being present to unite with us in this report, were in attendance to vote the stock of the State. We very soon perceived that it was the object of some of the gentlemen present to prevent any final action of the meeting on the main subject which had called us together, and this object speedily developed itself in a resolution offered by Col. Abert, “that a committee be appointed to examine into the matter of a contract made by the president of the company, and into the action of the board in reference thereto.” We saw in this movement the effort which we had anticipated—That a committee, if it had been appointed under the above reso-

lution, would not report to the meeting in session, was apparent to us. If the resolution had been agreed to, courtesy would have required the appointment of the mover of it, as chairman of the committee, and we had seen enough already to be certain that he would have taken his time to write *a book*, as he has now done, and in the mean time that the affairs of the company, would be left in the hands of the then incumbent presiding officer. The resolution of Col. Abert, was not immediately acted upon, but the meeting took a recess until 7 o'clock, P. M. During this recess, we (the State agents in attendance) agreed in private conference, to consent to the appointment of a committee, if Gen. McNeill desired it, provided, that it should report to the meeting then held, and we determined to remain in session for as long a time as might be reasonably asked for that purpose. Upon re-assembling, the board of directors, by the hands of William Price, Esq., (president pro tem., in the absence of Gen. McNeill,) presented to the meeting of stockholders, a report, containing a very full and satisfactory statement of all the facts and circumstances connected with the transaction in question. And here we beg leave to remark, that not a single fact presented by that report has been questioned, or denied, either by Gen. McNeill or Col. Abert, in their recent communications. Different constructions have been attempted in regard to some matters involved in the controversy, *but the facts stand as they were then exhibited, and they speak for themselves.*

After the report of the directors, together with the appendix thereto, had been read aloud, in the hearing of the meeting, Col. Abert again called up his resolution for a committee, whereupon A. B. Davis Esq., one of the State agents, moved the following as a substitute:

"Resolved. That the proceedings of the Board of Directors, of the 2nd July last, disaffirming and declaring null and void the contract entered into by the President of this company, with Thomas W. Letson and John Rutter, be, and the same are hereby approved.

"Resolved. That the said contract was entered into without any color of authority, and in utter disregard of the provisions of the charter of the company.

"Resolved. That the interests of the company required a change in the office of President.

"Resolved. That General William Gibbs McNeill, be and he is hereby removed from the office of President of the Chesapeake and Ohio Canal Company."

After proposing these resolutions, it was stated by one of the agents, (in conformity with their previous understanding,) that the committee asked for, would be assented to, provided an assurance were given that a report would be made to *that meeting*. The purpose of offering the resolutions, was to let the issue be fully understood. No such assurance, however, was then given, and the resolutions were taken up for consideration, and after a brief discussion, one of the agents moved, that the meeting adjourn until the following morning. This was done in order that the parties

might have an opportunity of maturing such views as they should see fit to present in opposition to them. The meeting accordingly adjourned until 8 o'clock next day. Upon re-assembling according to adjournment, the resolutions of Mr. Davis were again taken up, and discussed at considerable length by Col. Abert and others, in opposition, and by the State agents, and one of the private stockholders, in support of them. During this discussion, the proceedings in reference to the contract were canvassed and commented upon, which shewed that the speakers had come prepared for the subject. Col. Abert admits that he went "to the meeting *prepared to act.*" Gen. McNeill, also, appeared and addressed the meeting at large, in defence of his course in the matter in question. He was respectfully heard by the meeting, as was also every other gentleman who desired to say any thing on the subject. Colonel Abert, at the meeting on this day did as he states, modify his resolution by adding "to this or an adjourned meeting," but upon being asked the question, *General McNeill* stated that he wanted a committee to report to an *adjourned* meeting. When it appeared that the discussion had ended, (General McNeill having retired,) the agent who moved the resolutions arose and stated in substance, "that the request of Gen. McNeill, as *distinctly expressed*, was for a committee to report at a *future* meeting. He could see no possible necessity for such a committee, as all the facts were before the meeting, and the evidence of them among the records of the office in which they were then convened. The facts stated had not been denied, and they clearly demanded the action of the agents of the State. If they were disputed, they could readily be inquired into and their character ascertained. That furthermore, the party implicated, in a letter to the Board on the 20th of July, which was then before the meeting, had given the evidence on which he relied for his authority in executing the contract, and had been now heard fully, and at length, in his defence, and there could be no sufficient cause for delay. He could not therefore, consent to the postponement asked for, as there was no assurance or security that further unauthorised acts, injurious to the interests of the State and the company, would not be attempted by General McNeill in the interval, that must transpire before another meeting could be held."

After the speaker had made these remarks, he took his seat and there was a pause of some moments. None of the friends of Gen. McNeill made any response to them, and the question was consequently asked for and taken, and the resolutions were adopted by a vote of 10,287 ayes to 3,065 noes. For particulars see the journal of the 17th August, in the appendix.

Such is the manner in which Gen. McNeill was removed from office, and such the ample opportunity given to him for a hearing in his defence. It is not true then that the late President of this company, "was refused a hearing in his defence." It is not true that the State agents "acted with precipitation," in his removal. It is not true, that their decision was made "on no other evidence,

statement, or representation, than that which had been furnished the *night before* the act of removal took place; and the epithets applied to the course of the agents, in the paragraph quoted in the preceding part of this communication, from Col. Abert's report, are equally unwarranted, gratuitous, and unsustained by the facts. Col. Abert therefore, in his over-zealous apology for his friend, has done us gross injustice. The duty which devolved upon us, was an unpleasant one, but under the facts presented to us we could not shrink from its firm and conscientious discharge. We had for some time previously been painfully impressed with a growing belief, of Gen. McNeill's unfitness for the office which he held, but having entire confidence in the majority of the board of directors, and in their fidelity to the interests of the State and the company, we forbore any immediate indication of our sentiments in this regard, other than a reduction on the 7th of July, of the salary of the President to one thousand dollars. When however, he undertook to assume *all power*, further forbearance could not be justified, and we acted as the crisis demanded. That the conduct of Gen. McNeill, in executing the contract in question, was in open and rash defiance of the opinions and wishes of a majority of the State agents and the board of directors of the company, we had not, and have not now, a shadow of doubt. The time when the act was done, following so closely upon the adjournment of the meetings of both agents and directors, at which their sanction to the proposals was refused. The brief note addressed to the directors on the 7th July, desiring them to adjourn, and demanding the attendance of the Clerk and Chief Engineer, with the proceedings of the stockholders and board of directors, and the proposals which had been submitted to them. The demand for the seal of the company on the same day. The circumstances under which it was obtained and affixed to the instrument in question on the 13th July, as detailed in Mr. Barnard's statement No. 9, in the appendix to the directors report. The publication of the contract in the newspapers, before even it was submitted to the board, which by adjournment, was to meet in *seven days* from the day when the act was consummated, and whose sanction would most certainly have been waited for, if it had not been known that it would have been refused—all prove conclusively to our minds the correctness of the opinion we have just announced. And if conduct like this could be tolerated in the President of the company, it would be useless for the State to appoint its agents; or for the company to elect its six directors; or for the sovereign law making power, to impose restrictions and limitations upon the authority of a presiding officer of a corporation. The will of one man would control all. It was because we would not consent to sanction this, that we have incurred the displeasure of Col. J. J. Abert. The charge of tyranny and oppression, after every opportunity that any one could reasonably desire, was afforded for a hearing, is too commonplace to merit consideration. Probably no man was ever removed from office, who did not think the act of removal hasty and unjustifiable.

We have thus far considered the subject, presented by Colonel Abert's report, in reference to the act of removal. We will now proceed to examine in a cursory manner, some of the extenuating circumstances which he mentions, and the views he takes of the meaning and operation of the annulled contract.

These parts of the subject are so fully and ably discussed by the directors in their report, that there is but little left for us to say. It is there, we think, conclusively shewn, not only that the board of directors did not give to Gen. McNeill authority to make the contract in question, but that they expressly refused to do so. They not only directly rejected and denied to him authority to make that specific contract, but they never gave him authority to enter into any contract on behalf of the company. Col. Abert thinks he has detected a contradiction between the resolutions of the board of the 4th May, which is incorporated in the resolution of the 28th June, and the fourth resolution of the same series passed on that day, declaring—*"That whenever the priorities of the State shall be waived and postponed, and the company be thus placed in a condition to exercise exclusive control over the revenue and property of the company, the board will promptly enter into a contract for the completion of the work, on the most favorable terms that can then be obtained, and to secure the fulfilment of the same, on the part of this company, will give any pledge consistent with the general interests of the company and the laws of the State."* The error which Col. Abert has here fallen into, is the foundation of most of the fallacies of his report. From a careful consideration of the two resolutions, it will be seen that they are totally different in their provisions, and are in perfect harmony with each other. The resolution of the 4th May, proposes to give, for the completion of the work to Cumberland, two million of dollars in the bonds of the company, with liens upon the *net revenues* of the Canal, *subject and secondary to the existing liens on the same*. If a contract were entered into according to the terms thus proposed by the board, and they were the *only terms the company was legally able to offer*, the bonds that would be given under it would come in *after the liens of the State of Maryland were satisfied* out of the net revenues of the work. In bonds issued and made payable out of revenues so heavily encumbered as the revenues of the canal are, with the State's liens still in force and binding them as a preferred claim, the board might well be willing to offer to give the sum mentioned. But the subject would present itself in a very different aspect if the liens of the State were waived, and the bonds made *preferred liens*. The cost of the work payable in such bonds would be considerably less. It was, we presume, for these reasons that the board, only being legally able to give bonds with liens, *secondary* to those of the State, were willing, if any one should see fit to enter into a contract on those terms, to give *two* millions of dollars in such bonds, and they then further resolved, to mark distinctly the difference between bonds with *secondary liens*, and bonds with

preferred liens, that in case a contract could not be obtained payable in the first mentioned kind, that they would forbear to enter into a contract at all until after the State should waive its liens, and that when that was done, they would *then* make a contract upon the most favorable terms that could be obtained, clearly indicating their convictions that after a waiver of the liens, and the ability should be possessed to give preferred liens, that the work could be done for a greatly less amount than is mentioned in the resolution of the 4th May. This was the position of the board, clearly defined as we think, as early as the 4th of May last, and such position they have never in their recorded acts for a moment departed from. It might probably be said, that it could scarcely be supposed that any contractor would undertake to do the work for bonds of the company, subject to the liens of the State on its nett revenues, and without an assurance that these liens would be waived in his favor. Be this as it may, the board of directors could not lawfully offer any other, and *they never did*. And we unhesitatingly say, that in our conferences with Gen. McNeill, as the agents of the State, we understood from him that he could raise the means to finish the work upon such bonds. Such also, appears to have been the impression made upon others, for M. C. Sprigg, Esq., in his letter, resigning the office of President of the company, in December 1842, puts his resignation expressly upon the ground, "that he understood that assurances had been given by an individual out of the State, backed by a company, that if he could be elected to the Presidency of the company, the money would be *forthwith* advanced for the completion of the canal to the coal regions of Alleghany." It was under such circumstances that Gen. McNeill was elected, and with the avowed view of testing his confidence in his ability to raise the necessary funds, a resolution was passed at the same meeting, and previous to the election, declaring "that the salary of the President of the Chesapeake and Ohio Canal company, be increased to six thousand dollars, with the express understanding, that no part of said salary was to be paid until the amount of funds necessary to complete said canal to Cumberland, should have been procured."

The stockholders, including the State agents, thought that if Gen. McNeill could succeed in raising funds in the existing condition of the company, that he would be entitled to the salary named, and they accordingly granted it *on condition*, that the funds should be first procured. So matters stood on the 3rd December, 1842. Weeks and months passed away. The Legislature had met and adjourned without making any provision for the completion of the canal. The late president still persisted in declaring himself able to obtain the means, but stated that the condition annexed to his salary, impaired his ability, inasmuch, as capitalists might distrust his representations, as his salary was made dependent upon his getting the funds for the work. He therefore, again applied to have the condition removed, as he had previously done through one of the agents, viz : Gen. Tench Tilghman, very shortly after his elec-

tion, assigning therefor the reason above stated. This, bear in mind, was after the Legislature had refused to waive its liens at the December session of 1842. To avoid then, all the difficulties suggested, the agents consented and rescinded the condition on the 6th June 1843, and again elected him to the presidency. And in a private conference among all the agents of the State, it was then determined, that if within a reasonable time thereafter, the funds to complete the work were not obtained, that it would be useless to place further reliance on the president's expectations, and that the canal could not be finished until after the State postponed its priorities. We are not disposed to say that we would not have been equally willing that a contract should be made payable in the bonds of the company directly, instead of having them first cashed, if a reasonable arrangement could have been made to that effect, provided that the State's liens, were in no way to be compromised, nor the obligation to obtain a waiver of them be in any manner involved in the matter; but upon no terms would we assent to a present contract, which in any degree depended for its execution upon such waiver, for the plain reason that the company had no right whatever to stipulate to that effect, and the Legislature of 1842, whose agents we were, had expressly refused to release its liens on the canal, with a view to its completion. The policy of effecting a sale of the State's interest in the work was then adopted by them, and in view of that policy, we passed a resolution, which is the 4th, in the series passed at the meeting of the 6th June, directing, "that nothing whatever should be done by the board of president and directors, which might prevent or embarrass the sale by the State of Maryland, of her interest in the canal." By this resolution we distinctly announced our instructions to the board, that if they should make a contract, the *State liens* were not to be meddled with or in any manner brought into its provisions. We further instructed them that, before making a contract, they should invite proposals through the newspapers, and that none should be made, "except with the condition that it might be annulled by the company after 30 days notice, at any time within 12 months after the date thereof, on the payment of one per cent as damages upon the unexpended portion of the contract."

This last provision was added from a belief, if a contract were entered into payable in bonds *subject* to the *State liens*, that the amount required would be considerably more than the actual cost in cash, and that with this provision, if the State's interest should be sold, or the liens be waived by the Legislature, that money could be had to do the work at a cash price, and the contract that might be entered into for bonds be rescinded. In compliance with these instructions the board issued proposals on the 8th of June, last, a copy of the notice will be found in the Appendix to the directors report, (No. 4.)

At the next meeting of the stockholders, which took place on the 6th and 7th July, all the proposals which had been offered under the notice were submitted, but none of them conformed to the

terms mentioned. They were accordingly cast aside, and the salary of the president of the company was reduced to the suspension standard of one thousand dollars. The proceedings which then took place, and the events which followed, have already been commented upon in the preceding part of this report, and they are also set forth in detail in the report of the directors. We shall not therefore, further notice them.

Col. Abert says, "that the proposals of Letson and Rutter, were the most favorable that had been received." Story and Mills had previously proposed to finish the work for \$1,313,250, to enter into the contract immediately, and commence the work as soon as the necessary means should be provided for payment. Messrs. Sprigg and Thruston, *at that time*, had offered to contract for \$1,545,000, in money, or \$1,900,000, in the bonds of the company.

Messrs. Letson and Rutter, for \$1,550,000, in cash, or \$2,000,000, in the bonds of the company. Both the latter demanded preferred liens for the bonds, in case payment were made in that way.

In attempting to reconcile the contract that was entered into by the late president, with the terms of the resolution of the 4th of May, Col. Abert's ingenuity has we think altogether failed him. On Page 31 he says, "if the contract be compared with the resolution, it will be found to embrace all the conditions therein prescribed, namely to complete the work to Cumberland," (the contract is for the completion to the mouth of Savage;) "ample security in the percentage to be retained for work as done?" (*quere*, as to this, but certainly there is no security or guaranty whatever, that it should be done; customary terms and conditions of contracts," (not one of them; except for the disposition and management of laborers, which are the least important of those usually required;) "the work to be commenced in sixty days, if required," (after the liens of the State are removed, or the money obtained;) "to be finished in not less than two years, therefore, in two years and one day if required" (or two years and ten months, or any indefinite period, if the contractors so choose;) "price of the work 2,000,000 dollars, if in bonds of the company," (with preferred liens *on all its revenues and effects*;) "or \$1,550,000, if in ready money," (the Engineer's estimate was \$1,545,000.)

On page 43 and 44, of the report, Col. Abert fairly gives up the pretension which has been made, that Messrs. Letson and Rutter could under the contract be compelled to go on with the completion of the canal, from Dam No. 6, to Cumberland, before the State should waive its liens. He admits, that the first section, providing for the expenditure of \$100,000, is "the only part of the contract, that is made absolute and obligatory upon the parties, subject to no contingency." He then proceeds. "In regard to the second, and most important part of the work, to wit: the entire completion of the canal, according to the plan of the chief Engineer, from Dam No. 6, to Cumberland, and to which alone the objection has any application, it may be remarked, first, that *this part of the contract does not propose to be binding on the parties, until either the*

money funds shall be provided to defray the expense, or the State of Maryland shall agree to waive or postpone her priority of the liens in favor of the bonds to be issued to the contractors. If the money be procured and applied, the difficulty suggested cannot arise. If Maryland waives or postpones her priority, *and there really exists grounds for interpreting the expression, "all the revenues," as meaning the entire and gross receipts,* and not the nett income, it is obviously within the power of the Legislature of the State, to require, that this ambiguity be removed, and the fair meaning of the phrase be distinctly understood, as a condition precedent to such waiver or postponement on her part."

The difficulty referred to by Col. Abert, in the above quotation, is the first objection presented by the board of directors, for annulling the contract. On page 42, Col. Abert distinctly admits that, "if such be the true construction of the contract, it certainly constitutes a weighty objection to its provisions, which it would be difficult to justify, either on the score of expediency or authority." So then, it comes out at last that the contract as made, cannot be justified, "either on the score of expediency or authority," and if it had been ratified by the board, the Legislature would have been called upon to alter it by act of Assembly! We are at a loss to understand what power the Legislature could have exercised over the contract, had the board confirmed it. No act of theirs could alter it without the assent of the contractors, and it is very clear that they would not have yielded so important a provision in their favor as the one in question, without being bought off, as the directors suggest, at their own price. The Legislature, 'tis true, could have refused to waive the liens, and the prosecution of the canal might have been arrested. By this, the State alone, would be the loser. The contractors might have stood by passively, held on to their contract, and refused to proceed with the work themselves, or let others do so, except upon such terms as they might dictate. That a pledge of *all the revenues* of the company cannot be construed to mean merely the *nett* revenues, is too plain to admit of argument. But the contract not only pledges *all the revenues* of the company, but pledges and appropriates *all the revenues and effects!* The resolution of the 4th May, merely proposed to pledge the *nett* revenues, subject and secondary to existing liens, &c. This is another marked discrepancy. In fact, after the most careful consideration of the matter, we can scarcely find a single feature of the resolution of the 4th of May, in the contract that was made with Messrs. Lison and Rutter. They are radically and essentially different, both in their terms and object.

We scarcely deem it necessary, after the clear admission of Col. Abert, contained in the paragraph to that effect, quoted from his report, to enter into any reasoning to show that under the rejected contract, if it had been ratified, the contractors could not have been required to go on with the main work, between Cumberland and Dam No. 6, until after the State should have postponed its liens, or the money could be raised to pay for the work. But as in a

subsequent part of his report, by an after thought, or the suggestion of some other person, he has intimated a doubt in regard to the matter, and as Gen. McNeill in his report, has quoted from a pamphlet which was written and circulated in his defence, before he was removed, offering a different construction, we will briefly notice the subject.

We believe it is a well established principle, that covenants shall be expounded so as to carry into effect the intention of the parties, and that the intention, is to be collected, not from the language of a single clause of the instrument, but from the entire context. It is immaterial in what part of the instrument any particular covenant may be inserted. The exposition of it must be upon the whole instrument, both from what goes before and what follows. In the first proposal, submitted by Messrs. Letson and Rutter, (see Appendix to the directors report, No. 1,) they proposed to enter into a contract, "to commence *forthwith*, the work on the unfinished portion of the canal below Cumberland, to the extent of an expenditure of about *one hundred thousand dollars; on condition*, that if the sale of the State's interest shall be effected, or whenever means for the construction of the work shall be devised, they shall be the contractors, for the completion of the canal to Cumberland, and of the extension to or near the mouth of Savage River." Such were the proposals, and such we think are the features of the contract that was executed. If the contract unconditionally bound the contractors to go on with the entire work after 60 days notice, and without a waiver of the State's liens—why stipulate for the bootless expenditure forthwith, of only \$100 000! It was well known that the object of the company was the finishing of the canal, and that if it entered into a contract for that purpose, the desire would be to go on with it as soon as possible. What could be the intent then of contracting in the two first sections for the execution of work only to the specified amount named. The meaning is explained in the first clause of the third article. It was by way of "consideration," for the main contract which was to be undertaken and commenced after the State waived its liens. The clause in reference to commencing the work within sixty days after notice given by the company, and that in which the company promises and agrees to enter upon the execution of the work as soon as means are obtained, or the liens are postponed, must, we think, be construed as dependant covenants, and the first cannot be enforced

*NOTE.—Gen. McNeill in his report now admits that it would require \$300,000, to open the canal down as far as the mouth of the South Branch, and states that he relied on *former contractors* on the work to supply the \$200,000, additional cost—in his calculations in this behalf, he even supposes that "the very squatters strewed with their families along the unfinished portion of the canal, would have almost *worked for their daily bread in numbers sufficient for his purpose*." Such was the basis of his scheme!

until the happening of the latter. It will be observed that, in the 1th article, providing for the extension to Savage, it is stipulated "that any time after twelve months, after the completion of the canal to Cumberland, if the revenues therefrom, shall not be adequate to meet the interest due and payable on the bonds issued in conformity with the agreement, the contractors shall have the right to require that the work westward of Cumberland, shall be immediately proceeded with. Now if it were intended to finish the canal to Cumberland, for bonds subject to the liens of the State, this provision would be a mere mockery. The arrears of preferred interest and guaranteed dividends due the State, are now upwards of \$1 500,000, and the annual accruing demands of the same character, amount to \$382,500. In two years the preferred claims due and payable to the State of Maryland, out of the revenues of the canal, if the liens be not waived, will amount to the sum of \$2 265,000. To this add one years interest on the two million dollars of bonds that were to have been issued under the contract with liens subject to the liens of the State, and the revenue which the canal would be required to yield, the first year after its completion to Cumberland, would amount to the sum of \$2,385 000. Such would be the stipulation made, if the third article be construed as binding for present and unconditional execution, as the condition on which the contractors were to have the privilege of proceeding with the work to Savage. The absurdity of attempting such a construction is, we think, most manifest. Mr. Letson himself does not profess to put such construction on the 3rd article, because in a letter addressed to Gen. McNeill, bearing date 16th August, 1843, which was presented by Col. Abert himself to the meeting of the stockholders on the 17th of August, he expressly says, that "we, the contractors, understood that but two years is allowed us to finish the work to Cumberland, after the elapse of sixty days, *when the company are ready, either with money or bonds, as per contract, to say go ahead.*" The "being ready with money, or bonds, as per contract," can only be understood in reference to the provision of the last clause of the third article of the contract, which stipulates for a waiver of the State liens as the condition precedent to a commencement of the work. The letter of Mr. Letson, above alluded to, was written to explain his understanding of the obligation in reference to the time within which the work was to be finished, *after it should be commenced.*

Of the course pursued by the late President, in obtaining the seal of the company, we have nothing to say, except to refer you to the letter of the Treasurer of the 13th July, hereto appended. Col. Abert says, "the seal of the company is in the care of the President—he has a right to affix it to any instrument, or direct it to be affixed."

This is a gross error. The Chesapeake and Ohio Canal company, was organised by the first election of President and Directors, on the 20th June, 1828. At the first meeting of the board which

took place on the 24th day of June, they passed a resolution in the following words:

"*Resolved*, That the President be empowered to procure a permanent seal for this company, and in the interim that a plain seal, if necessary, be employed to authenticate the public acts of the corporation." See authenticated copy in the appendix marked No. 1.

In the early period of the existence of the company, as will appear by reference to the contracts which were made for the construction of the canal, the whole board of President and Directors, or a majority of them assembled, "signed with their own proper names, as President and Directors, the said contracts, with a scrawl as a seal opposite to each name." Under the resolution above quoted, a corporate seal was caused to be made, and was presented to the board on the 3d day of September, 1828, whereupon on the same day, the board of President and Directors unanimously passed the following order:

"*ORDERED*, That the seal be considered IN THE CUSTODY OF THE CLERK, and be carefully preserved by him." See authenticated copy of the order in the appendix No. 2, of this report.

Such is the law of the Chesapeake and Ohio Canal company in reference to its seal. It is expressly and emphatically placed in "*the custody of its Clerk*." He is its *keeper*. He is responsible to the company for its use. He alone, or in his absence, some other person *specially authorised*, and named for *that* purpose by the board, can affix it to an instrument, which must first be expressly made the act of "the board of President and Directors, or a majority of them assembled," by a regular vote and proceeding. The whole number which constitutes the board, acting severally, and not assembled in regular meeting, cannot authorise the seal to be affixed to an *instrument*, not first actually sanctioned by the board of "President and Directors, or a majority of them assembled." Col. Abert is mistaken therefore, and altogether wrong, in his views on this subject.

Col. Abert says, that "very important business has been transacted by individual members of the board, under an implied, as well as an express delegation of authority, and *sometimes* acts thus performed, without any original power, *have been ratified and made effective, by a subsequent approval and ratification*." This may be. In an emergency, a member of the board might possibly undertake to transact ordinary business of pressing importance, without authority; but the *validity* of the act would entirely depend upon the subsequent ratification of the board. If subsequently ratified, it would be binding, but certainly not otherwise.

In the instance in question a contract of *unprecedented magnitude* was not only executed, without the sanction of the board, but against their express and repeated votes. Not only was the instrument not ratified by them, but it was emphatically disaffirmed and declared void. It is as worthless therefore, as the paper that contains it, and more so. So guarded has the company been in regard to the execution of contracts, that in the printed form which

it always used in making contracts for the construction of the work, below the space left for the signature, are printed the following words, "President of the Chesapeake and Ohio Canal company, *by order of the President and Directors, in behalf of the company.*" In the appendix marked No. 3, will be found a blank form of the contracts used by the company from which this will be seen, as also, that the annulled contract contains none of the highly important "terms and limitations usually embraced in the contracts of the company for the construction of the canal." We do not deem it necessary to go into the enquiry, whether the board has any power to appoint an agent to make a contract for the construction of the canal, if they should desire to do so.

We will merely say, that the charter of the company expressly vests the "full power and authority in the President and Directors, or a majority of them assembled, to agree with any person or persons, *on behalf of said company*, to cut canals, etc." and being an expressly delegated power to a special body, and to a majority of that body assembled, we think it more than questionable, whether they could transfer that power, either to one of their own body, or any other person, for any purpose contemplated in that clause of the charter. It is however superfluous, to speak upon this point on the present occasion.

We have now at much length, and with some particularity of detail, examined the positions assumed by Col. Abert in his report. We felt the more bound to do so, because that report has been presented to your honorable body, and by an order of the House of Delegates has been printed. In it we were most unjustly assailed, and our official acts condemned, in language of the harshest character. We have accordingly in justice to ourselves, and out of respect for the good opinion of the honorable members of the two Houses of the General Assembly of Maryland, and of our fellow citizens at large, promptly answered the charge which has been alleged against us. We have shown that our course in regard to the removal of Gen. McNeill from office, was influenced by an imperious sense of duty. That his official conduct in reference to the execution of the contract with Letson and Rutter, was altogether inexcusable, and if tolerated, would be subversive of the charter of the company.

That he entered into the said contract without "any color of authority," and in defiance of the views and opinions of both the agents of the State and of the board of directors of the company. That by acts nearly approaching to violence, he compelled the surrender to him of the seal of the company—which by the regulations of the company is placed in *the custody of the Clerk*, to be affixed, only, to such instruments as the board of President and Directors, or a majority of them assembled, shall direct to be executed.

That these facts and charges alleged against him were made

known to him and published in the newspapers of the State, for several weeks previously to his removal from office.

That full and ample opportunity was allowed him for his defence—that he availed himself of the privilege, and addressed the meeting of stockholders on the subject, on the 17th of August last, as long as he saw fit to occupy the floor.

That the resolutions relating to his removal were debated in the said meeting, as long as his friends present chose to speak upon the subject.

That after the fullest hearing and consideration of the matter, the agents representing the State of Maryland in the said meeting, deemed the interests of the State and the company no longer safe in his hands, and removed him from office.

Our views in regard to the contract which was entered into, and properly annulled by the board of directors, we have likewise presented, and we have also shown how widely and essentially it differed from the terms of the resolution of the 4th of May, to which it has been attempted to be assimilated. We will therefore, now bring this report to a close. In what we have said, we have been influenced by no unkind feeling, either towards Col. Abert, or Gen. McNeill. The statements herein made have all been forced upon us by the attack, and if the shaft has recoiled, the bow from which it was sped was strung by their own hands.

From this review, we turn with pleasure to the able and faithful administration of the company, as now organised. From it, no unauthorised exercise of power—no assumption of authority not delegated, need be apprehended. We entertain the fullest confidence in its ability to discharge the laborious and important duties assigned to it, and of its fidelity to the interest of the State and the company.

A few words, now, on the subject of the completion of the canal and we have done. This subject is so fully and so ably presented in the special report of the President and Directors of the company, made to the stockholders on the 16th of November, copies of which have been laid before your honorable bodies, that the discharge of our duties in this behalf, will require but few words. It is therein made manifest, that the work can now be completed, if the liens of the State are postponed, as has been asked for. The deep stake the State has in the work renders its completion an object of paramount and engrossing importance. The objection to a further provision for the completion of the work, has heretofore arisen from a doubt of its availability. Now, the principal opposition is founded upon the assumption that when completed, it will so entirely monopolise the trade of the West, as well as the coal and iron business of Allegany, that it will not only withdraw the business from a great rival work in its vicinity, but will seriously injure the emporium of the State. We think that these fears are fallacious. But at all events, it is too late now to urge such objections. Maryland is interested in the canal to the amount of \$8,600,000, and upwards. The people are now taxed for the

State's investment in the work, and every principle of justice and policy requires, that the investment should be made available as speedily as possible, and this we think cannot be done, until the canal is completed. The subject, however, is now before your honorable body, and to your better judgements we commend it.

All which is respectfully submitted.

SAMUEL SPRIGG,

A. B. DAVIS,

JOHN VAN LEAR, Jr.,

Agents representing the State in Joint Stock Companies.
Saturday, February 3d, 1844.

APPENDIX No. 1, TO AGENTS' REPORT.

“*Resolved*, That the President be empowered to procure a permanent seal for this company, and in the interim, that a plain seal, if necessary, be employed to authenticate the public acts of the Corporation.”

True extract from the Journal of the proceedings of the President and Directors of the Chesapeake and Ohio Canal Company, on the 24th day of June, 1828.

Test,

THO. TURNER,

Clerk Ches. & O. Canal Co.

OFFICE CHES. & OHIO CANAL COMPANY,

Frederick, January 30, 1844.

APPENDIX No. 2, TO AGENTS' REPORT.

“Ordered, That the seal be considered in the *custody of the clerk*, and be carefully preserved by him.”

True extract from the Journal of the proceedings of the President and Directors of the Chesapeake and Ohio Canal Company, on the 3rd day of September, 1828.

Test.

THO. TURNER.

Clerk Ches. & O. Canal Co.

OFFICE CHES. & OHIO CANAL COMPANY,

Frederick, January 30, 1844.

APPENDIX No. 3, TO AGENTS' REPORT.

1837.

CONTRACT FOR SECTION No.

ARTICLES OF AGREEMENT,

Entered into this _____ day of _____
in the year 18____ between the Chesapeake and Ohio Canal
Company, by the President thereof, of the one part, and _____
_____ of the State of _____
of the other part.

1. WITNESSETH, That the said
promises and agrees in conformity with the annexed specification,
and with the plan of the Chesapeake and Ohio Canal as now lo-
cated, and with such changes or alterations thereof as may hereaf-

ter be adopted by the President and Directors of the said canal company, to grub, clear, excavate, embank, puddle, wall up, and construct in a substantial and workmanlike manner, all that part of the Chesapeake and Ohio Canal, designated as the section thereof.

2. The Principal Assistant Engineer in charge of the section, or his Assistant Engineer, by his direction, shall as soon as practicable after the end of each month, make out an estimate of the quantity and value of each species of work done pursuant to this contract, at the prices contained in the annexed proposal, and also of any extra work done in consequence of any alteration of the line or plan of the canal, which may have been adopted by the President and Directors of the canal company; but no change of the line or plan shall entitle the contractor to an increase of price upon any item of work although it may relatively, or in the aggregate, increase or diminish the quantity of any species of work to be done, unless such change shall remove the centre line of the canal more than thirty feet, laterally, or the level of the bottom of the canal more than one foot vertically, and shall at the same time render the construction of the section more costly, in which event the Engineer shall make such allowance in the monthly estimate as he shall deem just for the increased cost by reason of such change; and if the Chief Engineer of the canal company shall approve such estimate, he shall sign the same and forward it to the Commissioner of the canal. And it is mutually agreed between the contracting parties, that any estimate made and approved as aforesaid, shall be final and conclusive, unless objected to before payment, and within twenty days after it shall have been returned to the Commissioner, in which case the party objecting shall give notice to the other party in writing, stating the grounds of objection; and the Commissioner shall thereupon return the objections so made, together with the estimate, to the Chief Engineer; who shall immediately consider the matters of complaint, and make his report to the Commissioner in writing; which report shall be final and conclusive upon both parties without further appeal; and the making and receiving payment of any estimate to which objection may have been offered, shall be taken as evidence that such objections have been waived; and in like manner shall be conclusive the decision of the Chief Engineer upon any question that may arise as to the meaning of this agreement.

3. Within ten days after the return of any monthly estimate to the Commissioner, four-fifths of the sum appearing to be due for work performed, and materials furnished since the preceding estimate, shall be paid to the contractor in the mode in which payments are made by the regulations of this company, and no portion of the remaining fifth part shall under any circumstances be paid until this contract is fulfilled.

4. Within thirty days after this section shall have been completed, according to the true intent and meaning of this contract, a final estimate therefor shall be made and approved in the manner

provided for making and approving monthly estimates, and any objection thereto which may arise, shall be disposed of and finally settled, as in the case of monthly estimates, and within thirty days after the adjustment of the final estimate, the balance due thereon shall be paid.

5. The works shall always be open to examination during their progress, by the President and Directors, their Commissioner, Engineers, or any persons they may depute for that purpose, and the Contractor shall at all times keep open at his own expense, a horse-pathway, through or along side of the section, so that the above mentioned persons may readily pass through the same to the work above or below it.

6. At the expiration of every two weeks' work, a report shall be made by the Contractor to the Assistant Engineer having charge of this section, of the average force of men, carts, &c., employed upon the section for the preceding two weeks, according to such forms as shall be supplied by the Engineer.

7. It is mutually agreed between the parties to this contract, that the work on the aforesaid section shall be commenced within

days from this date—if the canal company shall so soon acquire the right to the land necessary for the section, or as soon thereafter as the right shall be acquired; that it shall be steadily prosecuted without intermission, with such force as shall in the opinion of the Engineer, secure its final completion by the day in the year 18 , at which time it shall be fully completed and delivered up; and it is further agreed that in the event that the said work shall not be so commenced, or prosecuted and completed; or, if the Contractor on being required thereto by the written order of the Chief Engineer, the principal Assistant Engineer, or his Assistant Engineer, shall fail or refuse to increase the force employed on the section to such extent as in the opinion of such Engineer shall be necessary to ensure its completion in the stipulated time; or in case the Contractor shall disobey any of the written orders of either of such Engineers, or shall violate any of the conditions of this agreement; then on a certificate of the fact by the Chief Engineer, either the President, or the President and Directors of the Chesapeake and Ohio Canal Company, may declare this contract abandoned, and the said canal company shall thereupon be exonerated from every obligation thence arising; and the reserved per-centage on the contract price, as well as all materials furnished, and work performed, and upon which no estimate or payment may have been made shall be forfeited to, and become the right and property of the Chesapeake and Ohio Canal Company; and the said company by its proper officer, may thereafter agree with any other person for the execution of the unfinished work, in the same manner as if this contract had never been made.

8. The contractor for this section shall not knowingly employ any man either as overseer or laborer who shall have been dismissed from any other work for bad workmanship, intemperance, or

disorderly conduct. Nor shall he continue to employ any man who shall be declared by the Engineer to be either disorderly, habitually intemperate, or a bad workman.

9. The contractor shall give his personal attendance to the execution of the work hereby contracted for, and it is mutually agreed that this contract shall not be let or assigned either in whole or in part, to any other person—and it is further agreed that no draft shall be drawn upon or accepted by the Commissioner of the canal, or the President and Directors of the canal company, unless such draft shall be drawn upon some particular estimate, after the contractor shall have certified on the back of said estimate that he is satisfied of its correctness.

10. All the materials of stone or earth removed or loosened in the excavation, as well as the fallen timber, shall be the property of the canal company, and after supplying such part thereof as may be required in the construction of the section, and the necessary fuel for the contractor, and timber for the construction of his shantees, the President and Directors may empower any other contractor, or person, to work up, or remove from the section, or in and other way dispose of such surplus material, and every facility for the removal thereof shall be afforded by the contractor for the section, provided he shall not incur any additional expense without proportional compensation, to be fixed by the Engineer.

11. All buildings or fences on the line of the canal shall be preserved, in such manner as the Engineer may direct, by the contractor—who shall protect them from injury by his hands, and as far as practicable by any other persons.

12. The Engineer shall have power to prescribe the manner of preparing for, beginning and conducting every species of work to be done under this agreement, with reference to its purpose, and the durability of such work, and his instructions shall be promptly obeyed; and if he shall disapprove of the quality of any work, it shall be the duty of the contractor to take down at his own expense, and rebuild so much thereof as shall be disapproved of, and if the contractor shall neglect or refuse to take down and rebuild work so disapproved of, the Engineer shall cause the same to be done at his cost.

13. It is understood that the Engineer may at any time, if he sees fit, set off such portions of this section as may be occupied by any lock, aqueduct, culvert or waste, and a reasonable distance above and below the same, so as to afford space for the use of the constructor of any such works as may be necessary on this section—and also a sufficient space to furnish material to embank such works, which portions of the said section, when so set off, shall be considered as excluded from this contract.

14. Material excavated from any culvert-pit, lock-pit, waste, or other foundation upon this section, may be put into the embankment, without giving the contractor for this section any claim for an allowance on that account. Earth required for embankment over and above that supplied by the excavation of the section, shall be

taken from such place as the Engineer may direct, the right to take the same to be paid for by the canal company.

15. It is understood and agreed, that all orders, given by an Engineer, and which shall cause an increase or diminution in the quantity or value of the work to be performed, shall be given in writing, and that when any claim shall be made by the contractor, for extra compensation, for work performed under such orders, the order shall be produced.

16. It is further agreed, that in case of the death, resignation or absence of any Engineer, the President and Directors may depute any other Engineer to act in his place.

17. And it is mutually agreed between the parties to this contract, that all the terms and conditions therein expressed, as well as the terms and conditions contained in the annexed specification and proposal, which are deemed and taken to be a part of this contract, shall be binding upon the parties respectively, according to their true intent and meaning.

And it is further agreed, by and between the parties aforesaid, that if complaint shall be made to the said canal company, by any person or persons employed in the execution of said contract by the said _____, that his or their wages for said work are unpaid for the space of thirty days after the same shall become due; and that the said _____ refuses, omits, or neglects, to pay the same; then, and in such case, the President and Directors of the said canal company may, if they think proper, direct that the existence of such debts shall be ascertained; and the amount thereof, or any part thereof, be paid out of any money due or about to become due to the said _____; and any money so paid shall be considered and deemed a payment to the said _____ under this contract, and shall be charged to him as such.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, the day and year first above mentioned.

President of the Chesapeake and Ohio Canal
Company, by order of the President and
Directors, in behalf of the Company.

[SEAL.]

WITNESS,

NOTE.—It is expressly declared by the President and Directors that no increase of the prices agreed upon in this contract, will be allowed under any circumstances whatever; nor will they consider any application that may be made for that purpose.

APPENDIX No. 4

Proceedings of the Stockholders of the Chesapeake and Ohio Canal Company, at their annual meeting, on the 5th of June, and their adjourned general meetings, holden on the 6th July, and the 16th and 17th August, 1843; including the Report of the Directors, of the 16th of August, 1843, in relation to the Annulled Contract, &c.

P R O C E E D I N G S .

MONDAY, June 5th. 1843.

Pursuant to the provisions of the Charter of the Chesapeake and Ohio Canal Company, the Fifteenth Annual Meeting of the Stockholders in said Company, was this day held at the office of said Company in the City of Frederick, Maryland.

On motion, Samuel Sprigg, Esq., was appointed Chairman, and Thomas Turner, Secretary.

Present.—The State of Maryland, by

Samuel Sprigg,

Tench Tilghman,

William U. Purnell,

John Van Lear, Esqrs.

The United States, by

Col. J. J. Abert.

The Corporation of Alexandria, by

Phineas Janney,

Robert H. Miller, Esqrs.

The Corporation of Georgetown, by

John Kurtz, Esq.

And sundry private Stockholders, constituting a large majority of the Stock in said Company.

Gen. Wm. Gibbs McNeill, President, in behalf of the President and Directors of the Company, presented the Report.

The Report having been read, it was referred, with the accompanying papers, to a Committee of five, to be appointed by the chair.

The following gentlemen were named as the Committee—J. J. Abert, Phineas Janney, John Kurtz, Tench Tilghman and John Hoyer, Esqrs.

On motion of Phineas Janney, the Chairman of the meeting was also added to the Committee.

On motion, it was ordered,

That when this meeting shall adjourn to-day, it stand adjourned until to-morrow, at noon.

The meeting was then, on motion, adjourned.

TUESDAY, 12 o'clock, M. June 6th, 1843.

Pursuant to adjournment yesterday, the Stockholders met again this day.

The chairman not being present, on motion, Pheneas Janny, Esq., was appointed chairman, *pro tem*.

Present.—The United States,

The Corporation of Alexandria,

The Corporation of Georgetown, by their several Representatives as on yesterday, and sundry private stockholders.

It being stated that the committee, appointed yesterday, were not yet prepared to report:

On motion, it was ordered,

That the meeting take a recess till 5 o'clock, this afternoon.

TUESDAY, 5 o'clock, P. M.

The stockholders, in conformity with the order of this morning, again met.

Gov. Sprigg took the chair.

Present.—The State of Maryland, by

Samuel Sprigg,

Tench Tilghman,

John Van Lear,

William U. Purnell

and A. Bowie Davis, Esqrs.

The United States,

The Corporation of Alexandria,

The Corporation of Georgetown, by their several Representatives, as on this morning, and sundry private stockholders, constituting a majority of the stock.

Col. Abert, in the behalf of the committee appointed yesterday, presented the following

REPORT.

The following report, made by direction of the committee, upon the report of the President, is submitted to the stockholders.

The matter of the report divides itself into two distinct subjects.

1st. The accounts, expenditures, sales of property, income from tolls, &c.; or, in general, of the finances of the company. It has not been in the power of the committee to bestow upon these subjects the attention which their importance demands. We beg leave, therefore, respectfully, to recommend that a committee of three be appointed by the chair to attend to this part of the President's report.

2nd. Of the extension of the canal. We are of opinion that the interests of the State, and all interests connected with, or to be developed by the canal, are eminently involved in the early and substantial extension of the canal, in conformity with its plan up to the town of Cumberland; and that to this end the energies of the President and Directors should be directed with vigor and perseverance.

With the general expression of opinion, the committee will bring

to the consideration of the meeting the necessity of observing certain precautionary measures, which will now be indicated.

1st. The competition ought to be excited, by public advertisements in the newspapers, before contract be entered into;—proposals to be received by the 26th June.

2nd. No attempt should be made by the company to purchase State Bonds, until the Treasurer shall have failed to effect a sale of the State's interest in the canal, as authorised;—say, until the 10th July.

3rd. That no contract shall be entered into, except with the condition, that it may be annulled by the company, after 30 days notice, at any time within twelve months after the date of said contract—on the payment of one per cent. as damages upon the unexpended portion of the contract.

4th. Provided, however, that nothing whatever shall be done by the board of President and Directors, which may prevent or embarrass the sale, by the State of Maryland, of her interest in the canal.

The report having been read, on motion, it was ordered,

That the same be accepted.

Mr. Davis, on behalf of the agents of the State of Maryland, presented the following resolution adopted by said agents, and asked that the same be spread upon the journal of proceedings of this meeting :

Resolved, That upon re-consideration and more mature deliberation, the agents of the State of Maryland, are of opinion that no article of freight should be transported on the line of the canal free of toll.

The leave was granted.

On motion of Gen. Tilghman, it was unanimously

Resolved, That the condition contained in the resolution, which was passed at a general meeting of the stockholders, held on the 3rd day of December, 1842, regulating the salary of the President of this company, be and the same are hereby rescinded.

On motion of Mr. Purnell, it was

Resolved, That this meeting will now proceed to the election of President and Directors for the ensuing year, or until others shall be appointed to succeed them, and that the chair appoint a committee of three to receive and count the ballots; the polls to be kept open for half an hour.

The chair appointed the following gentlemen as the committee, Caspar W. Weaver, Lewis Johnson and J. H. Alexander, Esqrs.

In conformity with the report of Col. Abert, this day adopted, the chair appointed the following gentlemen a committee of stockholders to examine and report upon the accounts of the past year : Frederick A. Schley, Wm. M. Beall and Charles J. Hammond, Esquires.

The time appointed for receiving the ballots having expired, Mr. Weaver, presented the following

REPORT.

Chesapeake and Ohio Canal Office,

FREDERICK, 6th June, 1843.

The committee appointed to tell the votes for President and Directors of the Chesapeake and Ohio Canal Company, cast at the regular annual election held on this day, beg leave to report that the whole number of votes cast was 12,805. Whereof

For President, Gen. William Gibbs McNeill,	received	12,805.
For Directors, James M. Coale,	"	12,805.
Frisby Tilghman,	"	12,805.
William Price,	"	15,805.
John O. Wharton,	"	12,795.
Daniel Burkhardt,	"	12,795.
John P. Ingle,	"	10,787.
Robert H. Miller, of Alex.,	"	2,008.
William A. Bradley,	"	10.
Charles M. Thurston.	"	10.
Samuel M. Semmes,	"	10.
John Pickell,	"	10.

And further, that the following named persons, having a majority of votes, viz :

For President, Gen. Wm. Gibbs McNeill.

And for Directors, James M. Coale,
Frisby Tilghman,
William Price,
John O. Wharton,
Daniel Burkhardt,
John P. Ingle,

Are elected President and Directors as aforesaid.

Signed,

C. W. WEAVER,

L. JOHNSON,

J. H. ALEXANDER,

Committee.

On motion of Gen. Tilghman it was

Resolved, That when this meeting adjourn, it stand adjourned to meet in the City of Baltimore, on the first Thursday in July, 1843, at 12 o'clock, M.

On motion it was ordered, That 500 copies of the proceedings of this meeting, embracing the Report of the President and the accompanying papers, be printed in pamphlet form for the use of the Stockholders.

On motion, the meeting was then adjourned.

SAMUEL SPRIGG, *Chairman.*

THOMAS TURNER, *Secretary.*

PROCEEDINGS, &c.

BARNUM'S HOTEL, CITY OF BALTIMORE,

Thursday, July 6, 1843.

The stockholders of the Chesapeake and Ohio Canal Company met this day in general meeting, at Barnum's Hotel, in the city of Baltimore, pursuant to adjournment on the 6th ultimo.

Present: The State of Maryland, by Governor Samuel Sprigg, Tench Tilghman, A. Bowie Davis, and John Van Lear, Esqs.

And John H. Alexander, a private stockholder.

On motion, Governor Samuel Sprigg took the chair, and Thomas Turner acted as Secretary.

The Chairman presented and read the following communication from General William Gibbs McNeill, President of this Company:

JULY 6, 1843.

GENTLEMEN: I have the honor to submit, herewith, the proceedings of the Board of Directors of the Chesapeake and Ohio Canal Company, which have taken place since your last meeting, as also the proposals for taking under contract the unfinished portion of the canal, which were presented to the Board under the published notice heretofore given. During the day, other proposals will be received and submitted to you.

I have the honor to be, very respectfully, your obedient servant,
WILLIAM GIBBS McNEILL,
President, &c.

To the STOCKHOLDERS of the Ch. and Ohio C. C.

General McNeill appeared before the meeting, and verbally stated that, since the foregoing was written, two other proposals (being the proposals of Letson & Rutter and H. G. Wilson & Co., now laid before the stockholders) had been received by the President and Directors, but had received from them no final action.

He also laid before the stockholders the following correspondence between the Clerk and the Treasurer of the Western Shore of Maryland:

BARNUM'S HOTEL, BALTIMORE,

July 6, 1843.

DEAR SIR. In pursuance with your letter, received by me this morning, I repaired to Annapolis, and addressed a letter to the Treasurer of the Western Shore, (a copy of which is herewith,) and received in reply his letter, (which is also herewith.)

All which is respectfully submitted, by yours, most respectfully,
THOS. TURNER, Clerk, &c.

Gen. WILLIAM GIBBS McNEILL,
President, &c.

CITY OF ANNAPOLIS, July 6, 1843.

DEAR SIR: By request of General McNeill, President of the Chesapeake and Ohio Canal Company, I have visited this city for the especial purpose of respectfully asking of you whether you have effected a sale if the State's interest in Chesapeake and Ohio Canal Company, pursuant to the act of the late General Assembly of Maryland; or if any measures on the part of the said Company to effectuate said sale, of not made, will interfere with the intention of the law to make that sale.

The information is sought that it may be laid before the stockholders, now convened in the city of Baltimore.

If a sale has not been effected, it may be desirable to the stockholders to be informed whether any offers have been made—or whether, in your opinion, there be a reasonable hope of the act referred to being carried into effect, as regards the said Chesapeake and Ohio Canal Company.

I shall return to Baltimore to-day, and would most respectfully request your reply at the earliest moment, so that I may be prepared, on my return, to submit the information sought to the stockholders.

With great respect, I remain your obedient servant,

THOS. TURNER,
Clerk Ch. and Ohio C. C.

JAMES S. OWENS, Esq.,
Treasurer W. Shore Md., Annapolis.

STATE TREASURY,

Annapolis, July 6, 1843.

SIR: Your letter of to-day contains the following inquires:

1. "Whether you have effected a sale of the State's interest in the Chesapeake and Ohio Canal Company, pursuant to the act of the late General Assembly of Maryland.

2. "If any measures on the part of the said Company, to effectuate said sale, if not made, will interfere with the intention of the law to make that sale.

3. "If a sale has not been made, it may be desirable to the stockholders to be informed whether any offer has been made.

4. "Whether, in your opinion, there be a reasonable hope of the act referred to being carried into effect, as regards the said Chesapeake and Ohio Canal Company."

To which I answer as follows: To the 1st, no.

2. Not knowing what measures may be contemplated or determined on by the Chesapeake and Ohio Canal Company, it is impossible for me to say whether such measure will "interfere with the intention of the law to make that sale."

3. Sufficient time has not elapsed since the 1st instant, that being the earliest period at which the Treasurer is directed, on certain stipulated conditions being complied with, to transfer the interest

of the State in said Chesapeake and Ohio Canal Company, to enable me to form any satisfactory opinion on that point.

I have the honor to be, sir, respectfully, your obedient servant,

JAMES S. OWENS,

Treasurer W. Shore Maryland.

THOMAS TURNER, Esq.,

Clerk Ch. and Ohio Canal Comp.

The correspondence having been read,

Mr. Davis offered the following resolution :

Resolved, That the proceedings of the President and Directors, in regard to the proposals for contracts submitted in pursuance with the order of the 7th of June last, meets the approbation of the stockholders of the Chesapeake and Ohio Canal Company.

General Tilghman offered the following as a substitute :

Resolved, That the proposals for finishing the canal, which have been this day made to the President and Directors of the Chesapeake and Ohio Canal Company, be, and the same are hereby, referred to the President and Directors for their final decision and action in the premises.

On motion of Mr. Van Lear, both the resolution and substitute were laid upon the table.

Mr. Van Lear then moved the following preamble and resolutions :

Whereas it was represented to the agents of the State of Maryland, that in the contingency of the election of the present President of the Chesapeake and Ohio Canal Company, funds could be obtained for the completion of the work, on the credit of the Company, without in any manner involving the State in any additional responsibilities on account of said corporation : And whereas a considerable time has elapsed, and sundry meetings have been held for the purpose of considering propositions for accomplishing this desirable object, the result of all such proposals proving abortive, from the consideration that they contain, independent of other serious objections, a clause interfering with the State's lien on the work, and asking indemnity and ultimate security from this source; thus interfering with the State's sovereignty, and asking from the stockholders of this private corporation to incorporate in a contract for the completion of the work a transfer to the State's prior claim—a power which, all admit, rests only in the Legislature of the State ; and any interference with which would only subject the stockholders and the President and Directors, to the just censure and condemnation of the Legislature and the people of the State : And whereas the stockholders, in the election of the present incumbent at the head of this company, did, prudently and wisely, provide that his salary of \$6,000 per annum, should depend on the contingency that the funds promised should be furnished for the completion of the work to Cumberland, which proviso was, at a subsequent meeting of the stockholders, rescinded, for reasons not necessary to mention : And whereas, a salary of \$6,000 per annum,

amounts to one-ninth part of the gross receipts of the finished portion of the work—an amount altogether disproportionate to the annual revenues, and, in the judgement of the stockholders, working manifest injustice to a large and meritorious class of citizens, who are at this time, and have long been, creditors of the company, and whose sufferings, by reason of the default in payment on the part of this company, have been such as to call for the sympathies of the people of this State: And whereas, many of those suffering and unfortunate creditors have been incarcerated in the prisons of this State, with their pockets filled with the irredeemable obligations of this company, and from other considerations operating on the minds of the stockholders they recommend to the deliberate consideration and ask for the present convention of stockholders the adoption of the following resolutions:

Resolved, That, in the present bankrupt condition of the Chesapeake and Ohio Canal Company, it is expedient, unwise and unjust to the suffering creditors of this company, to continue the present salary of \$6,000 per annum, to the President of the company.

Resolved, That, in view of the suggestions contained in the preamble to these resolutions, the salary of the President be reduced to \$1,000 per annum, during the suspension of the work on the unfinished portion of the canal.

Resolved, That, in adopting the above resolutions, the stockholders are governed by an imperious sense of duty, and disclaim all unkind feelings towards the distinguished incumbent now at the head of this corporation, whose efforts, they have reason to believe, have been untiring, in his endeavors to accomplish the completion of this great work over which he presides, and whose want of success can only be attributed to the peculiar position of this Company, in its connexion with the majority stockholder, the State of Maryland.

Mr. Davis moved the following, as a substitute:

Whereas, by the resolution of the stockholders of the Chesapeake and Ohio Canal Company, in general meeting assembled, on the 3d day of December, 1842, the salary of the President of this Company was increased to \$6,000, with the express understanding that no part of the said salary was to be paid until the amount of funds necessary to complete said canal to Cumberland should be procured: And whereas, in consequence of representations made to the stockholders that the said limitation and restriction, in regard to the payment of the said salary to the President, was calculated to impede his efforts, and render less practicable his success, for the procurement of the aforesaid funds and the completion of the said work, a resolution was passed on the 6th day of June last, by which the said condition was rescinded: And whereas it appears, from the communication of said President and the proceedings of the Board of Directors, now laid before this meeting, that no funds, as aforesaid, have yet been obtained, and there is no prospect of obtaining the same, or of letting the work under contract, until after the meeting of the next Legislature of Maryland, and a release or

waiver, on its part, of the liens and priorities of the said State: And whereas the work being, until that time, in suspension, the said salary is greatly beyond the value of the services to be required of the president of said company, and inconsistent with the interest of the stockholders and the obligations due to a large and meritorious class of creditors: Therefore

Resolved, That the salary of the President of the Chesapeake and Ohio Canal Company, from and after this day, shall be at the rate of \$1,000 per annum until otherwise ordered, in conformity with the charter of this company.

Resolved, That no charge for extra expenses ought to be allowed.

Resolved, That all orders and resolutions inconsistent with the foregoing resolutions be, and the same are hereby, rescinded.

The question being taken, the substitute was adopted.

On motion, it was

Ordered, That, when this meeting adjourn to-day, it stand adjourned to meet at the office of the company, in the city of Frederick, on Wednesday the 16th day of August next, at 12 o'clock, M.

The meeting was then, on motion, adjourned.

OFFICE CHESAPEAKE AND OHIO CANAL COMPANY.

Frederick City, Md.,

Wednesday, Aug. 16, 1843—12 o'clock M.

Pursuant to adjournment on the 6th ultimo, a general meeting of the stockholders of the Chesapeake and Ohio Canal Company was held this day at the office of said company, in the city of Frederick, Maryland.

Gov. Sprigg, who presided at the meeting of the 6th ultimo, not being present, nor any of the agents of the State of Maryland,

On motion,

John Kurtz, Esq., was called to the chair.

Present, The United States, by Col. John J. Abert.

The Corporation of Georgetown, by John Kurtz, Esq.

The Corporation of Alexandria, by R. H. Miller, Esq.

And sundry private stockholders.

A majority of the stock not being present,

On motion, it was

Ordered, That this meeting take a recess till 4 o'clock, P. M., this day.

Wednesday, August 16, 1843—4 o'clock, P. M.

The stockholders having again assembled, on motion,

William U. Purnell, Esq., (one of the State's agents,) was called to the chair.

Present : The State of Maryland, by William U. Purnell, A. Bowie Davis and John Van Lear, Esqrs.; and

Walter Lenox, Esq., one of the proxy of the Corporation of Washington, in addition to the stock represented this morning—being a majority of the stock.

Col. Abert offered the following resolution :

Resolved, That a committee be appointed to examine into the matter of a contract made by the President of this Canal Company, and into the action of the board in reference thereto, and to report to this or an adjourned meeting.

An intimation being made that a meeting of the board of directors was anticipated so soon as the cars from the West should arrive, (which had already been delayed several hours beyond the usual time of arrival,) and that some communication was expected from the board, relative to the matter referred to in the resolution, when they should have been convened, and a quorum formed—

On motion, it was

Ordered, That this meeting take a further recess till 7 o'clock this evening.

Wednesday, August 16, 1843—7 o'clock P. M.

The stockholders being again assembled, on motion of William U. Purnell, Esq., Governor Samuel Sprigg, (chairman of the meeting on the 6th ultimo,) now present was called to the chair.

Present as at 4 o'clock this afternoon.

The Secretary, by direction of the chair, read the proceedings of the meeting held on the 6th ultimo.

William Price, Esq., in behalf of the directors, and by authority conferred upon him as President pro tem., appeared before the meeting, and presented a report of the Directors of the company, in the following words :

Report of the Directors of the Chesapeake and Ohio Canal Company to the Stockholders in general meeting.

OFFICE OF THE CHES. & OHIO CANAL COMPANY,
Frederick, August 16, 1843.

GENTLEMEN :

Since your meeting of the 6th of July last, the President of this company, of his own mere motion, and without the consent or sanction of the board of directors, has seen fit to execute, in the name of the company, and seal with its corporate seal, an instrument of writing purporting to be a contract with Thomas W. Letson and John Rutter, for the completion of the canal, which the board have found it there unpleasant but imperative duty to disavow and annul. And inasmuch as public attention has been invoked by a publica-

tion of said contract in the newspapers of the State, even before it was laid before the board, and a controversy excited, in which we, the directors of the company, have been placed at issue with the president, it becomes our duty to present to you a brief history of the past action of the company in reference to the subject of contracts, and a statement of the facts and circumstances of the present case, in vindication of the course we have pursued.

Gen. McNeill was elected president of the Chesapeake and Ohio Canal Company on the 3rd of December, 1842, but he did not qualify by taking the oath of office required by the charter until the 12th of April, 1843. On the 13th of April, the board of President and Directors being then in session at the office of the company in Frederick, proposals were presented for the first time by Thomas W. Letson and Co., for a contract to complete the canal —[See Appendix, No. 1.]

These proposals were read, and ordered to be laid on the table, and the board then adjourned to meet again on the 2d May. On the 4th of May, the President laid before the board a letter enclosing the form of a contract of articles of agreement which had been prepared by T. W. Letson & Co., embodying the terms and provisions of the proposals submitted by them to the board on the 13th of April, and which are substantially the same as the articles of agreement which have since been executed with them by the President.—[See Appendix, No. 2.]

The proposed articles of agreement were then taken up for consideration, and, after due deliberation, the following resolution, was adopted, viz :

“*Resolved*, That the board decline entering into a contract with “said T. W. Letson & Co., upon the terms and conditions contained “in said proposed articles of agreement,”—[See Appendix, No. 3.]

On this resolution the ayes and noes were called for, and being taken, stood as follows :

Ayes.	No.
Messrs. Tilghman, Coale, Burkhart, Wharton, and Ingle.	General McNeill.

The Board of Directors, after having, as they thought, thus finally disposed of *these* proposals of Messrs. Letson & Co., with a view of making known the terms upon which they were willing to enter into a contract for the completion of the canal to *Cumberland*, passed a resolution, which will be found incorporated in the proceedings of the 28th of June, a copy of which is herewith exhibited, marked Appendix, No. 5.

On the 5th of June the board again met. The annual report of the President and Directors, which set forth the course pursued by the board on the subject of contracts, but which we believe is still

in the hands of the President, and has never yet been printed, was adopted, and ordered to be presented to the stockholders, who were then in session.

This report, as you are aware, was referred by your body to a committee, (of whom Colonel Abert was chairman,) who made report thereon, embracing certain propositions for the guidance of the board in regard to contracts. The first proposition contained in that report was, that competition be excited by advertisement in the newspapers, inviting proposals by the 26th of June. The third, "*that no contract should be entered into, except with the condition that it should be annulled by the Company, after thirty days' notice, at any time after twelve months from the date of said contract, on the payment of one per cent, as damages on the unexpended portion of the canal.*"

This report was adopted by your body, and a copy thereof was ordered to be submitted to the Board of Directors, which was accordingly done on the 7th June; and the board thereupon caused an advertisement to be published, inviting proposals in conformity therewith.—[See Appendix, No. 4.] Pursuant to the advertisement thus made, several proposals were submitted for completing the canal, *one* of which offered to finish the work for the engineer's estimate, if paid in money, or for one million nine hundred thousand dollars, if paid in the bonds of the Company. This proposal, however, as well as all the rest, with the exception of one for a small portion of the work, required payment in gold or silver or their equivalent, or bonds of the Company, with *an exclusive lien* on the revenues and property of the company, and made the execution of the work dependent on the Company's obtaining the money or the future waiver of the liens of the State. The proposals of Messrs. Letson & Co. were also again presented under the said notice, not changed in any material particular.

When these proposals were under consideration, and after the sense of the Directors disapproving of all of them was very clearly manifested in the discussions which had taken place, the President of the company offered a resolution, which, in its *original form*, as will be seen by reference to the files of the office, proposed "*that the President of the company be authorized, and is hereby empowered, to accept the proposals of Letson & Rutter, provided they assent to certain alterations,*" &c., which were stated. As soon as the president offered this resolution, one of the directors promptly objected to giving the president "the authority" and power asked for; and the objection receiving the general assent of the board, the president himself struck out the words "president of company be authorized, and is hereby empowered, to," and inserted, in lieu thereof, the words "the board will accept, &c."

Various objections still being made to the said resolution, a substitute for the whole was finally offered by one of the directors,

and adopted. The ayes and noes being called for, were taken, and appeared as follows:

Yeas.	No.
Messrs. Coale, Wharton, Price, Ingle, Burkhart, and Tilghman.	General McNeill.

In the proceedings above referred to, a copy of which is herewith exhibited in the Appendix, marked No. 5, and which will be found recorded in the Directors' Journal of the 28th of June, the Board again distinctly announced the terms upon which alone they felt authorized, under existing circumstances, to enter into a contract. They determined that, unless they could obtain a contract on the terms proposed in the resolution of the 4th of May, they preferred leaving the work open for future competition. They declared that the company now had no gold or silver, nor their equivalents, to pay for the work, nor any power to give an exclusive lien, as demanded, upon its revenues and property, inasmuch as the State of Maryland already holds and possesses mortgages and liens for a large amount on the same; that, when these liens should be removed, or means be otherwise obtained, they would then enter into a contract, upon the most favorable terms that, under such circumstances, could be procured, for the completion of the canal; and, to secure the fulfilment of the same on their part, would give every pledge consistent with the interests of the company and the laws of the State. They also directed that a copy of their proceedings, together with the proposals for completing the canal, which had been submitted to them, be laid before the stockholders at their earliest meeting.

On the 6th of July, both the board and the stockholders met in the city of Baltimore. The board were in session first in point of time, and a short report was adopted, submitting to the stockholders copies of the resolutions above referred to, together with the proposals for completing the canal which had been received, and stating that, in the course of the day, other proposals would be received and submitted to them. These were the proposals of Letson & Co., which General McNeill had promised should conform to the resolution of the 4th of May. In the evening of the same day, (July 6,) the expected proposals were submitted to the board, and read, when it was at once perceived that they were the same in substance as those which had already been repeatedly rejected by the board, somewhat changed and mystified in form and phraseology, but in no important particular altered. (These proposals are now in the possession of the president, and we are unable to make an exhibit of them.) If a vote had been taken on them, they would have been promptly rejected. At the request of General McNeill, however, the board took no final action on them at

the time, but, as the stockholders were desirous of adjourning that night, the proposals were at once referred to them, as promised in the morning's report.

The stockholders then took up the whole subject, embracing the proposals which had been submitted to them, and the proceedings of the board in relation to contracts, and, after considering various propositions in relation to the matter, finally adopted a resolution reducing the salary of the president from six to one thousand dollars, on the express ground that "the said salary was greatly beyond the value of the services to be required of the president of the company," inasmuch as "there was no prospect of letting the work under contract until after the meeting of the next Legislature of Maryland, and a waiver on its part of the liens and priorities of said State."—[See copy of the preamble and resolution, marked Appendix, No. 6.]

The stockholders then adjourned, regarding, no doubt, the question as settled.

On the next day, (July 7,) while the directors were awaiting the appearance of the president to organize the meeting, pursuant to the adjournment of the previous evening, they received from him a verbal message, which he afterwards communicated in writing, a copy of which will be found in the Appendix, marked No. 7, apprizing them that he was indisposed, and "desiring them to adjourn"—"the board to be recalled, with due notice, when necessary."

In the same letter he requested the clerk "to furnish him with the proceedings of the stockholders, and to return to him the proposals submitted to the board and them. He also desired to see the Clerk and Chief Engineer in the evening, and directed the Clerk to bring with him the records of the board."

The Directors, conceiving the message to them rather peremptory and uncalled for, appointed a President *pro tem.*, transacted what business was before them, and then adjourned to meet at the office in Frederick on the 20th of July.

Immediately after this adjournment, on the same day, and before the Directors had separated for their homes, the Clerk delivered to General McNeill, at his chambers, the proposals demanded in the letter above referred to. When he received them, he informed the Clerk that "he intended to prepare a contract from them."

On the same day, at a later hour of the evening, the President demanded of the Clerk the seal of the company, again declaring that he was about to make a contract for the work, and should wish the seal attached. The Clerk informed him that the seal was at the office in Frederick; that, even if he had it with him, he could not affix it to a contract, and attest it as clerk, without an order of the board, and he should conceive himself bound to examine and determine for himself whether any paper to which the seal was desired was such as an order of the board authorized.—[See copy of Mr. Turner's letter to the board, marked Appendix, No. 8.]

On the 5th, the clerk left Baltimore, and went to Georgetown, where he remained for a fortnight. In the mean time, to wit, on the 12th of July, General McNeill, in company with Messrs. Letson, Rutter and another person, appeared at the office in Frederick, where, after first demanding the seal of the Treasurer of the company, Mr. Barnard, then despatching Mr. Letson as an express to Georgetown for the clerk, and then renewing the demand of the Treasurer, the iron safe was at length unlocked, the seal taken from it by the President himself, and with his own hands affixed to the instrument of writing which purports to be a contract between the Chesapeake and Ohio Canal Company and Thomas W. Letson and John Rutter, for the completion of the canal.—[For the particulars of this last mentioned transaction, see the statement of the Treasurer, marked Appendix, No. 9.]

The conduct of the President, in relation to this subject, needs no comment. The facts and circumstances all speak for themselves. His act, in the premises, can be construed into nothing less than a palpable assumption of unauthorized power, in total disregard of the recorded opinions of the directors, and in contravention of the express provisions of the charter of the company. Yet, notwithstanding that we believed this—notwithstanding that we had, on several occasions, expressly rejected the proposals of Letson & Co.—notwithstanding that when the President laid before the board, at their meeting of the 20th of July, the contract which he had entered into, he informed us that it was “signed, sealed, and delivered,” thereby implying that it was beyond our reach, we yet endeavored to divest ourselves of all feeling of resentment, and to approach the consideration of the subject with calm deliberation.

We first requested of the President a statement of the authority upon which he relied for a justification of his act. We then referred the subject to counsel, for their legal opinion as to the validity of the contract; and, finding that it rested with us to make it binding or void, we took up the articles of agreement, and considered them section by section, and line by line. If our judgments would have allowed us to approve of the contract, we were willing to do so, and pass by the indignity. But, on examining the details of the instrument, it was found to conform neither to the resolutions of the board nor the recommendations of the stockholders, contained in the report of Colonel Abert of the 6th of June, and to be far more objectionable than the rejected proposals themselves. The board of directors, therefore, unanimously disaffirmed the contract, and declared it to be null and void. In our proceedings on the subject, we have fully and particularly stated the reasons which governed us in the course we have pursued, and to them, therefore, we respectfully refer you, a copy of which is herewith exhibited, (marked No. 10.)

It will appear from the letter of General McNeill, that he has placed his claim of authority to execute the said contract on three grounds. [See Appendix, part of No. 10.]

First. "On the disposition uniformly asserted by members of the board to prosecute the canal to an extent, if not to entire completion, to make it productive to the company;"

Secondly. On a resolution adopted by the board on the 4th of May, 1842, in relation to a proposed exchange of company bonds for the bonds of the State; and,

Thirdly. Upon the resolution of the board of the 4th of May, declaratory of the terms upon which *they* were willing to enter into a contract.

In reference to the first ground, we need only say that it is true that the members of the board have, at all times, felt and expressed an anxious desire to prosecute the work on the canal on proper terms, as their recorded efforts to that effect, which may be found among the archives of the Company, will testify; but on no occasion have we, either as a body or individually, by word or act, given to the President of the company any authority to act for us in the premises, or exercise that power in relation to the execution of contracts which, by the charter, is conferred only on "the President and Directors, or a majority of them, assembled." On the contrary, as we have before shown, the board have directly refused to confer upon him that power.

As regards the second ground of authority, it can hardly be necessary for us to speak. By reference to the resolution upon which the President relies, a copy of which is in the Appendix, marked No. 11, it will be seen that the board on that occasion conferred upon him no new power for any purpose whatever, but only requested him to *use such efforts as were compatible with the duties of his office* to enable the *Company* to effectuate the objects therein mentioned. It did not authorize him to exercise any authority which the charter did not confer upon him, but on the contrary limited and restricted his efforts to the sphere of *official duties*. The whole scope of the resolution only contemplated an exchange of the company's bonds for State bonds, if it could be effected, to buy out the State interest, extinguish the liens, and enable the company to make a contract to finish the canal! This project originated with the President himself; and although we, from the first, regarded the scheme as visionary and impracticable, we thought that the passage of a resolution *merely requesting him to ascertain if it could be done*, for in fact we did no more, could be productive of no evil, if it did no good. Our surprise therefore may well be imagined when we learned from the President that he based his authority for entering into a contract to complete the canal, in part, upon this resolution. With a view to a better understanding of the shallowness of this pretension, it may be proper to add, that, on the very day on which the said resolution was adopted, the board of directors unanimously rejected all the proposals for completing the work which had been submitted to them, among which were the proposals of Messrs. Letson and Rutter, and at the same time passed the resolution on which the President relies as his third ground

of authority. In this resolution of the 4th of May, as we have before stated, the board distinctly announced the terms upon which alone they were willing to enter into a contract at this time, and reiterated their adherence to the same in their resolutions of the 28th of June, a copy of which is in the Appendix, marked No. 5.

The President asserts that the contract entered into by him virtually embodies the terms and conditions of this resolution of the board, and is in conformity therewith. We maintain that it is altogether different. Let us compare them.

The resolution states that "the *board* are willing to enter into a contract for the completion of the entire unfinished portion of the canal between dam No. 6 and Cumberland, or the west end thereof."

The contract is entered into by General McNeill alone, and embraces the entire extent to the mouth of Savage.

The resolution requires the work to be commenced in sixty days after the contract shall be entered into, and to be completed in two years therefrom.

The contract provides that the execution of the main work shall not be entered upon until the company procures the means to pay for the same, or the liens and priorities of the State be removed in favor of the bonds that may be issued thereunder, and that it shall not even then be required to be completed within two years from such commencement.

The resolution offers for the work the Engineer's estimate (\$1,545,000,) if paid in money, or two millions of dollars, payable in the bonds of the company, with liens on the *nett revenues* of the canal, *subject* and *secondary* to the existing liens of the State.

The contract covenants to pay one million five hundred and fifty thousand dollars in money, or two millions of dollars in the bonds of the company, secured by *exclusive liens on all the revenues* and effects of the company. It is true that, in the wording of the contract, the company is made to pledge and appropriate all its revenues and effects, subject to all liens existing at the date of the contract, but then the entry upon the execution of the main work is not to take place until the liens and priorities of the State are removed or postponed *in favor of the bonds* to be issued under the provisions of said contract, so that the pledge contained in said contract amounts at last to an *exclusive lien on all the revenues and effects of the company*.

The resolution proposes an unconditional contract; the contract entered into is entirely dependent on future legislation as regards the main work. The resolution demands ample security from contractors for the fulfilment of the contract; the contract provides no security whatever.

The resolution requires such terms and limitations as have been hitherto embraced in the contracts of the company for the construction of the canal; among which are, a positive reservation of 20 per cent.; a power to declare the work abandoned, upon a non-compliance by the contractor with certain regulations mentioned; a forfeiture of the twenty per cent. to the company, together with all

materials furnished and work performed, upon which no estimate or payment may have been made when such abandonment takes place; an obligation on the contractors to preserve all buildings or fences on the line of the canal from injury by their hands; and an authority, on the part of the company, to pay, out of any money that may be due from it to the contractor, the wages of such laborers as may present to them well-founded complaints against the contractors for not discharging their dues. These provisions have, from experience, all been found of essential importance. The contract contains none of them. It does, indeed, provide for such reservation, *within* twenty per cent., as the President and Chief Engineer may deem proper; but even the contingent amount thus stipulated for, is nowhere forfeited to the company, but remains the property of the contractors.

It will thus be seen that the plea of justification put in by the President is altogether groundless, and that the contract entered into by him is totally different from the terms embraced in the resolutions of the board. But, even if it were in perfect conformity thereto, we think the course pursued by him would still be without justification or excuse. The charter of the company requires that contracts for the construction of the canal shall be made only by "the President and Directors, or a majority of them, assembled;" and if proposals had been submitted, which, in his opinion, would meet the views of the board, it was his bounden duty to have called them together, and obtained their sanction, before the corporate seal was attached to any instrument that bore the form of a contract of the company.

The President did not wish the presence of the directors at what he was about to do. On the contrary, in the very same letter which he addressed to the clerk on the morning of the 7th of July, in which he requested the proposals which had been submitted both to the stockholders and to the board, (and which had been virtually rejected by both of those bodies,) for the purpose, as he informed the clerk, of preparing a contract for them, he *desired the board to adjourn*, saying that he would recall them *when necessary*. He did not again recall them. He did not therefore deem their participation necessary to the execution of a contract involving millions of dollars, and covering the entire revenues and property of the company. Why did he not recall them? Because he must have known, from all their previous action on the subject, that the directors did not and would not concur with him in the acceptance of Letson and Rutter's proposals. From the first to the last, he had uniformly voted to accept those proposals; and, upon every occasion, the directors had as uniformly and unanimously voted to reject them. What he could not do, therefore, with the consent of the directors, he sought to do without it, and we have disaffirmed and annulled his act.

In steadily refusing to enter into a contract for the completion of the canal, the execution of which was to depend on the future waiver of the State liens in favor of the bonds of the company that

were to be issued under it, we have been governed by a single eye to what we regarded the true interests of the company, and consequently those of the State of Maryland, which is by far the largest stockholder. We thought it would be a hazardous experiment to dictate terms to the Legislature of the State at the same time that we were soliciting its aid. We were admonished by the past that there were other interests, besides those which looked to means for the completion of the canal, which expected to be benefited and provided for in any act that postponed the existing liens; and that, if the company at this time should bind themselves in a contract which was not to be executed until the liens and priorities of the State were removed *in favor of the bonds that were to be issued in fulfilment of it*; that even if a law were passed which might be made available, if the company were free to act; it would yet find itself unable to derive any benefit from it, by reason of such contract. If it did not enable the company to pay in cash, or give to the contractors *exclusive liens on "all the revenues and effects,"* they had only to hold on to their contract, and the company would be powerless in their hands, and the prosecution of the work be indefinitely postponed. The only mode of release would be to buy off the contractors, at such price as they might see fit to demand. It was for these considerations that the directors have deemed it the wisest course to enter into no contingent or conditional contract, embodying *specific terms*, which were to abide the sanction of the legislature, but unless the work can be let on the terms embraced in the resolution of the 4th of May, to await patiently the action of the State of Maryland, through her next General Assembly, in the confident expectation that some measure will then be adopted which will enable the company to finish the work. Nothing is wanting we believe, but a waiver of the State liens to accomplish this most desirable object; and we cannot think that the State will longer postpone a grant of this, when it is manifest that those liens will continue to be profitless until the canal is completed. With these liens removed, we have reason to believe that the canal can be completed to Cumberland for at least fifteen per cent. below the price stipulated to be paid in the contract which was entered into by the President, and as early as is therein contemplated. There are now on file, in the office of the company, proposals to do the work for that sum, "so soon as the necessary means are provided for payment;" and with the power to give an exclusive lien on the nett revenues of one hundred and eighty-four miles of a canal, leading up to the richest coal region in the Union, to secure the payment of such sum as may be necessary to finish only eighteen and three-tenths miles of said canal, we have not the slightest doubt of success. The proposals to which we have just referred were made by a New York company, in the year 1841.—[See copy in the Appendix, No. 12.] By reference to these proposals, it will be perceived that they then offered to finish the canal between dam No. 6, and Cumberland for 15 per cent. below the Engineer's estimate, and to deduct for work done subsequently to

that estimate. The report of the Chief Engineer of the 1st December, 1842, shows that, after deducting from the estimate of 1841, such work as has been done since that estimate, and such other work previously done as was included in that estimate, because final estimates of it had not then been made, the sum of \$1,545,000 remains as the amount required for completion.

Apply to this sum the deduction offered to be made by the New York company, and we have—

Estimate of the Chief Engineer,	-	-	-	\$1,545,000
Less 15 per cent.	-	-	-	231,750

Sum required for completion by Story, Mills, & Co.,	
of New York	1,313,250

It will thus be seen that, nearly two years ago, this company had on offer, from men of undoubted responsibility, to finish the entire work to Cumberland for *one million three hundred and thirteen thousand two hundred and fifty dollars*. Since that time there has been a considerable depression in the price of labor, and if current funds be procured, we indulge the hope that the canal can be finished even for a less amount than the one above mentioned. Entertaining these views, and with these facts before us, how could we have justified ourselves to you, had we accepted the terms proposed by Letson & Co., and entered into a contract to give them one million five hundred and fifty thousand dollars, in gold or silver, or their equivalents, or two millions of dollars in the bonds of the company, with exclusive liens on *all its revenues and effects*?

The proposition in respect to the present expenditure of one hundred thousand dollars, as a *consideration* for a prospective contract, we regarded as altogether illusory. The idea that it is *possible* “to render the unfinished portion of the canal navigable” to Cumberland with that sum, even if it were really expended, is so wild as scarcely to merit a grave remark; and, if it failed to effect that object, or extend the line of navigation to any useful purpose, as we clearly believe, such expenditure would only add to the already onerous debts of the company, without in any manner increasing its means of payment. There can be no object in expending more money on the unfinished portion of the work, until the company are put in possession of the means to render it productive.

We have thus fully and frankly stated to you our views and action on this subject. It remains for you to approve or disapprove, and to adopt such course in the premises as in your judgments the interests of the company may require.

WILLIAM PRICE,
J. M. COALE,
DANIEL BURKHART,
JOHN P. INGLE,
F. TILGHMAN,
JOHN O. WHARTON,

Directors of the Ches. and Ohio Canal Co.

P. S. Since the above report was prepared, proposals have this day been received from Messrs. Sprigg and Thurston, under date of the 25th of July, in which they offer to enter into a contract to complete the entire unfinished portion of the canal between dam No. 6, and Cumberland for *one million four hundred and fifty thousand dollars* if paid in current funds, or *one million seven hundred and fifty thousand dollars* if paid in the bonds of the company, with preferred liens. And they obligate themselves to enter into said contract at any time between this and the first of May next.—[See copy of the proposals in the Appendix, No. 13.]

APPENDIX TO THE REPORT OF THE DIRECTORS.

No. 1.

FREDERICK, *April 13, 1843.*

GENTLEMEN: While the negotiations are going on in reference to the sale of the State's interest in the canal, under the late law of Maryland, and until they shall have been closed, we propose to commence *forthwith* the work on the unfinished portion of the canal below Cumberland, to the extent of an expenditure of about one hundred thousand dollars; on condition that, if the sale shall be effected, or whenever means for the construction of the work shall be devised, we shall be the contractors for the completion of the canal to Cumberland, and of the extension to or near the mouth of the Savage. The Company to have the option to pay for said completion and extension (the work to be executed upon the plans and specifications of your Chief Engineer) two millions of dollars for the former and one million of dollars for the latter, if paid in bonds of the Company, bearing six per centum interest per annum, payable semi-annually, the nett revenue of the canal being pledged for the punctual payment of the interest and the liquidation of the principal, in not exceeding twenty years; or, if the Company prefer to pay current money, monthly, as the work progresses, the amount to be paid in that case shall be the estimate of your Chief Engineer. And in case there shall be a failure to carry into effect the aforesaid law, or by other means, now or hereafter to be devised, to raise the money for the purpose aforesaid, then the aforesaid expenditure to be considered as a debt against the Canal Company. This expenditure to be confined to the first sixteen or seventeen miles of the canal below Cumberland; and when completed for navigation, (as may be agreed on,) the revenues arising from the same to be applied for the payment of the interest and principal of such expenditure, in addition to the above security.

Very respectfully submitted, by your obedient servants,

T. W. LETSON & CO.

To the PRESIDENT and DIRECTORS

of the Chesapeake and Ohio Canal.

No. 2.

An article of agreement made and entered into this fourth day of May, in the year eighteen hundred and forty-three, by and between the Chesapeake and Ohio Canal Company of the first part, and Thomas W. Letson of the other part.

First. The said Thomas W. Letson, for and in consideration of the premises hereinafter recited, hath agreed, and by these presents doth covenant and agree, to and with the said Company, that he will forthwith enter upon the execution of the unfinished portion of the Chesapeake and Ohio canal lying between the town of Cumberland and dam numbered six, and proceed with the same to the extent in value, and agreeably to the estimates of the Chief Engineer of said Company, of one hundred thousand dollars. The said labor to be performed and expenditure to be made under the direction of the President of said Company, and in such mannner, if possible, as to render the said portion of the canal navigable.

Second And, in consideration of the premises aforesaid, the said Chesapeake and Ohio Canal Company hath agreed, and doth hereby covenant and agree, to and with the said Thomas W. Letson, to pay him, for the labor performed and expenditure made by him as aforesaid, the reasonable value thereof, agreeably to the estimates of its Chief Engineer as aforesaid, in ready money or in bonds of the company, to bear an interest of six per centum per annum, payable semi-annually; and the principal thereof to be paid within twenty years from the date hereof. The said payments to be made monthly from the date of these presents, as the work progresses, and agreeably to the value thereof, to be estimated by the Chief Engineer as aforesaid, from time to time; and if said payments shall be made in bonds of the company, as aforesaid, the same shall be chargeable on the revenues of the company arising from the use of its works between Cumberland and dam numbered six; and the said company doth hereby pledge and appropriate its revenues to be derived from the before-stated portion of its works to the payment of the principal and interest of the bonds which may be issued as aforesaid.

Third. And, in consideration of the premises aforesaid, the parties hereto mutually covenant and agree, to and with each other, in manner following, that is to say: the said Thomas W. Letson hereby assumes and undertakes to complete the residue of the unfinished portion of the Chesapeake and Ohio canal which lies between dam numbered six and Cumberland, agreeably to the plans and specifications thereof which have already been prepared by the authority of said company, and approved by it; and also to execute a canal extension or slack-water navigation from Cumberland to or in the direction of the Savage river, agreeably to the plans and specifications thereof made by the authority of the said company, and approved by it; the said work to be undertaken and commenced within sixty days after the said Letson shall be required by the

company so to do, and proceeded in to its completion within a reasonable time ; and the said company engages and undertakes to pay to the said Letson, for his labor and expenditure, to be performed and made as aforesaid, in ready money or in bonds of the said company, bearing an interest of six per centum per annum, payable semi-annually, and the principal thereof to be paid within twenty years from the date hereof, at the option of the said company—the value thereof, if paid in ready money, to be adjusted agreeably to the aforesaid plans, specifications, and estimates, made under authority of the said company, as aforesaid, that is to say : one million five hundred and fifty thousand dollars, reduced by such sums of money as may have been paid or may be payable by the said company to the said Letson, under the preceding articles of this agreement ; and if in bonds of the company, as aforesaid, then the value shall be adjusted for the labor and expenditure to be made and performed in completing the said canal between dam numbered six and Cumberland, at the sum of two millions of dollars, subject to a deduction as aforesaid, and for the extension beyond Cumberland at the sum of one million of dollars ; and the said payments shall be made monthly, as the work progresses, and agreeably to the value thereof, to be estimated by the Chief Engineer of the company from time to time ; and the said company hereby pledges and appropriates all its revenues and effects for the payment of principal and interest of its bonds, to be issued as aforesaid. And, further, that the said company shall and will enter upon the execution of the work contemplated by this article so soon as means can be devised or procured for execution of the same, or the present liens existing on the revenues of the company can be or are removed or postponed in favor of the bonds to be issued under the provisions of this agreement.

In witness whereof, the Chesapeake and Ohio Canal Company hath caused this instrument to be signed by its President, and sealed with its corporate seal ; and the said Thomas W. Letson hath hereunto set his hand and seal, the day and year first hereinbefore written.

No. 3.

“The President presented and read a letter from the Chief Engineer, dated this day, presenting a form of contract proposed by T. W. Letson & Co., for the completion of the canal to Cumberland, and for its extension to the mouth of Savage. The proposed articles of contract having been read, Colonel Coale presented the following resolution, and asked that the question be taken by yeas and nays :

“*Resolved*, That this board decline to enter into contract with said T. W. Letson & Co., upon the terms and conditions embraced in said proposed articles.

“Yeas: Messrs. Coale, Tilghman, Burkhaat, Wharton, and Ingle—5.

“Nays: General McNeill—1.

Extract from journal of proceedings of the President and Directors of the Chesapeake and Ohio Canal Company, on the 4th of May, 1843.

Test,

THO. TURNER, Clerk.

No. 4.

OFFICE CHESAPEAKE AND OHIO CANAL CO..

City of Frederick, Md., June 8, 1843.

Proposals will be received at this office until the 26th instant, for the execution of the work remaining to be done on the line of the canal, from dam No. 6 to Cumberland. The proposals to be either for the entire work, or for one or more sections thereof. Payments to be made in the bonds of the company, payable in twenty years, bearing interest not exceeding 6 per centum, payable annually.

Persons bidding are requested also to state the price for which they will execute the work, if paid for in cash, should the company be prepared so to pay for it. The work to be completed within two years from the date of the contracts; the right being reserved to the company to annul the contracts at any time within twelve months after the date thereof, upon giving thirty days' notice of its purpose so to do, and the payment of 1 per centum as damages upon the unexpended portion of the contract.

Any information desired, in regard to the mode of construction and the work to be done, will be furnished, on application at this office, at any time previous to the said 26th instant.

THOS. TURNER,

Clerk Ch. and Ohio Canal Co.

No. 5.

Whereas no proposals for taking under contract the unfinished portion of the Chesapeake and Ohio canal have been made, in conformity with the terms of the published notice, except for a small portion thereof: and whereas the proposals for finishing the entire works, now submitted to the board, afford no guaranty for its completion, and are conditioned, moreover, upon the company's paying in gold and silver, or their equivalent; or, if payment be made in the bonds of the company, that an *exclusive lien* upon the revenues and property of the canal be given for the payment of the principal and interest of the amount in bonds demanded for the completion of said work:

And whereas this company has no means of making payment in gold and silver, or their equivalent, nor any power, under the existing state of things, to give an *exclusive lien* upon the revenues and property of the said company, inasmuch as the State of Maryland already holds and possesses mortgages and liens for a large amount on said revenues and property: Therefore—

1. *Resolved*, That this board has no power or authority, at present, to enter into a contract or contracts upon the terms stipulated for and demanded in the said proposals; and that such contracts, if entered into, would only have the effect of trammelling the company, and subjecting it to damages, without in any degree advancing the completion of the work.

2. *Resolved*, That this board adhere to the resolution passed on the 4th day of May last, in the words following, to wit: That the board are willing to let the entire unfinished portion of the canal to Cumberland, or the west end thereof, under contract, upon such terms as it is in their power legally to make, that is to say: they will enter into a contract for the completion of the whole canal to Cumberland, or the western end of the unfinished part of the canal to that place, provided the person contracting and undertaking the work will agree to receive the bonds of the Chesapeake and Ohio Canal Company in payment, payable in twenty years, bearing interest, payable semi-annually; and provided, further, that ample security be given by the contractor, or contractors, for the fulfilment of the contract; the contract to be upon such terms and limitations as have been hitherto embraced in the contracts of the company for the construction of the canal; the work to be commenced in sixty days after the contract shall be entered into, and be completed in two years thereafter. And the board are willing to give two millions of dollars for finishing the whole, payable in the bonds of the company as aforesaid; or for less than the whole, a proportional part of that sum, payable in like manner; with the condition, that, if current funds be procured by the company, the work be paid for at the rate and estimate of the Chief Engineer, made in the year 1842, and now on file in the office of the company. And the board are further willing to give to such contractor or contractors a lien upon the nett revenues of the canal, subject and secondary to the existing liens upon the same, for the payment of the interest and principal of the bonds that may be issued in fulfilment of said contract."

3. *Resolved*, That this board will at all times receive proposals in conformity with the terms of the above resolution.

4. *Resolved*, That, whenever the priorities of the State shall be waived or postponed, and the company be thus placed in a condition to exercise a full and exclusive control over the revenues and property of the company, this board will promptly enter into a contract for the completion of the work, on the most favorable terms that can then be obtained; and, to secure the fulfilment of

the same on the part of this company, will give any pledge consistent with the general interests of the company and the laws of the State.

5. *Resolved*, That a copy of the above resolutions, together with the proposals for completing the canal now submitted to the board, be laid before the stockholders of the company at their earliest meeting.

Resolutions adopted June 28, 1843.

No. 6.

See proceedings of the stockholders of the 6th July, 1843, pages 6 and 7.

No. 7.

No. 1.]

* BARNUM'S CITY HOTEL,
Friday, July 7, 1843.

DEAR SIR:—Please apprise the board, now in session, or at least awaiting a meeting, that, as I am indisposed, I desire an adjournment; the board to be recalled, with due notice, whenever necessary.

I would thank you to furnish me with the proceedings of the stockholders, and to return me the proposals submitted to the board and them.

I desire to see you and the Chief Engineer this evening and you will please to bring with you the records of the Board.

I am yours, respectfully, &c.

WILLIAM GIBBS MCNEILL,
President, &c.

THOMAS TURNER, Esq., *Clerk, &c.*

No. 2.]

BALTIMORE, July 7, 1843.

DEAR SIR: I have occasion for the seal of the company. If you have it with you, do me the favor to leave it with me before you return to Frederick; if not, it will be necessary for you to bring it to me from Frederick by the return cars to-morrow evening.

I am yours, respectfully, &c.

WILLIAM GIBBS MCNEILL,
President Ches. and Ohio Canal Co.

No. 3.]

OFFICE CHES. AND OHIO CANAL CO.

Frederick, July 12, 1843.

DEAR SIR: As I am awaiting you, and my time is important on business of the company, I send this to desire you to be here by the morning train to-morrow, that I may return in the afternoon.

If prevented by any cause from doing so, you will please send enclosed to me the key of the repository of the seal of the company, which the bearer, Captain Letson, will deliver to me.

Yours, respectfully, &c.

WILLIAM GIBBS McNEILL,

President, &c.

THOS. TURNER, Esq., *Clerk, &c.*

No. 8.

CANAL OFFICE, FREDERICK, July 20, 1843.

GENTLEMEN: As I deem it not improbable that the contract said recently to have been entered into by the President of this company, for the completion of the canal, &c., may be a subject of consideration by the board at its sitting to-day, and as I have, by their order, the custody of the seal of the company, I consider it proper to make the following statement, which I am sure General McNeill will corroborate, as far as the facts are known to him, and as regards what passed between him and myself

On the 7th July instant, at Barnum's Hotel, I received from General McNeill the letter accompanying this, (marked No. 1,) asking, among other things, for the proposals which had been laid before the board. In compliance with the request, on the evening of that day I presented to General McNeill, at his chambers, the proposals. When he received them, he stated that he intended to prepare a contract from them.

On the same day, at a later hour of the evening, I received the letter of same date, also accompanying this, (marked No. 2.) In answer to which, I replied in writing, stating the seal was not in my possession; that it was left in the office at Frederick; that the same, with its fixtures, was too weighty to be portable. That letter I delivered in person, also, at his chambers. While there, General McNeill verbally stated that he was about to make a contract for the work, and should wish the seal attached.

In the course of conversation I remarked that I could not affix the seal, and attest it as clerk, without an order of the board, and should conceive myself bound to examine and determine for myself whether any paper to which the seal was desired, was such as an order of the board authorized. I did so respectfully; and under a conviction of such course being required of me by my official

duties and responsibilities. This interview and conversation occurred at a late hour of the night of the 7th. When I separated, or left General McNeill's room, nothing was further understood in relation to the matter.

On the next morning, I felt it my duty to apprise two of the board, then in Baltimore, and about to set out for Frederick, of the call upon me for the seal, (those members were Colonels Coale and Tilghman,) apprising them at the same time that I should not return to Frederick for several days.

I went from Baltimore to Georgetown on the morning of the 8th, whence I did not return until the 18th to Frederick. On the 12th of July, at near 10 o'clock, P. M., I received by the hands of Captain Letson the letter of the 12th July, also herewith, (marked No. 3,) and in reply wrote a letter in substance as follows:

That I had an engagement on the next day, by appointment, on important private business, which would subject me to great inconvenience to omit attending to; and as I had left the key at the office when I left Frederick, I did not regard it imperatively necessary, from the letter of General McNeill, that I should return. The letter I delivered to Captain Letson, for General McNeill.

Thus much I feel it due to myself respectfully to state.

All which is very respectfully submitted, by

Your obedient servant,

THOS. TURNER.

To the PRESIDENT AND DIRECTORS

of the Chesapeake and Ohio Canal Company.

No. 9.

OFFICE CHESAPEAKE AND OHIO CANAL Co.,

Frederick City, July 13, 1843.

SIR: It is my duty to make to you the following statement:

Yesterday, the 12th instant, the President, in company with two persons, who I believe to be a Mr. Letson, and a Mr. Rutter, called at this office. The former asked me for one of our former contracts, which I handed to him. He then asked for the seal of the company, alleging that he had promised Mr. Sherrard to seal some bonds which were to be given to him in exchange for post notes, and that he had to seal some other papers. I told him that the seal was in the custody of the clerk, (at that time absent in Georgetown,) and, consequently, that the key of its case was under his control, and I had not charge of the seal, and no authority to use it. This not satisfying him, he sought in and about the clerk's desk for keys, of which some were applied to, but would not fit the lock. Remarking that this was not going to stop him, he essayed by force to pull open the doors, but did not proceed to accom-

plish it. He then withdrew, stating that he should go down forthwith into the district, and bring up with him to-morrow (to-day) Mr. Turner, to seal the papers he wished. About noon of this day I received the letter of which the annexed is a copy, to which I replied verbally, to the bearer of it, (Mr. Scott,) that I would attend to it immediately. I instantly went in search of the counsel of the company, but, he being absent from town, I had not the benefit of his instructions. Returning to the office, I found the President, Mr. Scott, Mr. Letson, and Mr. Rutter, waiting to follow me in. The former observed, that I had received a letter from him, and would perceive that Mr. Turner had indicated the place where the key of the seal case was to be found. I informed him that I had found it, and that it was in the clerk's confidential drawer, in the iron safe, but that I could not reconcile it to my views of duty to give up the key or the seal to any one; that I was not the custodier of it, and that it was as essentially in the care and keeping of the proper officer, the clerk, as if he were then present. The President insisted on his right officially to enter all the archives of the company's office, and that there was no part of them confidential against the head and organ of the company, which he was. And he therefore called upon me to give up to him the key of the iron safe.

Unable rightfully to deny to the President of the Company access to any part of its office, I could not with propriety refuse obedience to this demand; and I handed to him the key of the iron safe, of which the Clerk and myself have concurrent occupancy. The receipt and memorandum (of which copies accompany) detail as clearly as I could his proceedings thereon, and the authority on which he relies for their justification.

With the aid of Mr. Scott, and in my presence, he affixed the seal of the Company to two papers, unaccompanied by the "attest" of any officer of the Company, and before even any signatures were placed upon them. Of their purport I was not informed, neither did I now what took place in the Directors' room, to which the President, Mr. Letson, and Mr. Rutter, had for a few minutes thereafter retired.

The above is an epitome of the circumstances, and contains, I believe, all the material facts, in the order of their occurrence.

I submit it, respectfully; your most obedient servant,

ROBERT BARNARD,

Treasurer C. and O. C. Co.

To each Member of the board.

(Copy.)

OFFICE CHESAPEAKE AND OHIO CANAL Co.,

Fredrick, July 13, 1843.

DEAR SIR: On application yesterday, in person, at the office, for

the Clerk of the company, in order to procure and affix the seal of the company to certain instruments to be executed, I was informed by you that the Clerk was absent, and, as you believed, had the key of the repository of the seal with him. I have just learnt, from the Clerk, that "the key you (I) desire was left at the office in Frederick;" and through the messenger with whom I communicated with the Clerk I further learn that said key is in the usual place, or, as well as recollected, "in the case which contains the press and seal."

You will therefore at once be pleased to procure it, and open said "case;" and, if you cannot find it, you will forthwith procure a key from a locksmith or otherwise, and open the cabinet or case, that I may have access to the seal forthwith.

Yours, respectfully,

WILLIAM GIBBS McNEILL,

President, &c.

To Mr. BARNARD, *Treasurer, &c.*

RECEIPT.

OFFICE OF THE COMPANY,

July 13, 1843—1 o'clock, P. M.,

I hereby acknowledge the receipt of the key of the iron safe belonging to the office, from which I have taken the key of the safe containing the seal and press, in virtue of my authority, as President of this company, at all times to have access to all the archives of the company, and, on the present occasion, to affix the seal to a contract for the completion of the canal above No. 6 dam.

WILLIAM GIBBS McNEILL,

President Chesapeake and Ohio Canal Co.

MEMORANDUM.

Quarter past 1, P. M.

Having used the key and seal for the purpose above stated, I herewith return the key, in the absence of the Clerk, to the Treasurer, for safe keeping, subject to the order of the Clerk.

WILLIAM GIBBS McNEILL.

No. 10.

Thursday, July 20, 1843.

The President presented and read the following communication:

FREDERICK CITY, *July 20, 1843.*

GENTLEMEN: As you have been heretofore apprised by me, I

have concluded a contract on the part of the company for the extension and completion of the canal above dam No. 6, which has been signed, sealed, and delivered, the original of which I herewith deliver.

I hope it may be considered by the board, as by myself, to be promotive of the best interests of the company, and, if so, that it will receive the expression of their acquiescence; if not, that, while the responsibility remains with me, the subject may be referred to the next meeting of the stockholders.

The work I have seen commenced, and I am more than ever assured, especially if I shall be fortunate enough to have the co-operation of the Board, will be prosecuted vigorously to successful and timely completion.

I am, gentlemen, very respectfully, your obedient servant,

WILLIAM GIBBS McNEIL,

President Chesapeake and Ohio Canal Company.

To the DIRECTORS

of the Chesapeake and Ohio Canal Company.

He also presented sundry verbal statements, explanatory of his course in making the contract referred to.

Ordered, That the President be respectfully requested to communicate, in writing, the verbal statement made by him to the board this day, of the action, on the part of this board, upon which he relied for the authority upon which he executed the agreement with Messrs. Letson and Rutter.

In response to the foregoing, (a copy having been communicated to the President by the Clerk,) a communication was received from the President, in the words following:

FREDERICK CITY, July 20, 1843—7 $\frac{1}{4}$ P. M.

GENTLEMEN: I have but this moment learned, through the Clerk of the company, your desire that the President of the company communicate, in writing, the verbal statement made by him to the board this day, of the action, on the part of the board, upon which he relies for the authority upon which he executed the agreement with "Letson and Rutter," accompanied with the request of "an early answer."

The first "*reliance*" would be in the disposition uniformly asserted by members of the board to prosecute the canal to an extent (if not to entire completion) to make it productive to the company, and thereby to relieve the State; and that disposition, I conceive, has been made manifest by their resolution authorizing and requesting their President to take measures to promote or effectuate a sale of the State's interest, &c., as pointed out, and, subsequently, in another resolution expressive of their willingness to enter into a contract on specified terms and conditions, which have, as he conceives, virtually been embodied in the contract entered into.

In conversation, I said that, to "effectuate a sale of the State's interest," &c., under the first resolution alluded to, a positive con-

tract to *prove* the cost of completing the canal, and thereby (in connexion with its probable trade) the *worth of the work*, was deemed almost an indispensable preliminary; and that a *sanction* to make a contract was thereby inferrible, especially when, in connexion with the other resolution expressing the willingness of the board to enter into a contract on specific terms, which, it is thought, are, and were meant to be, as they are virtually, imbodyed in the contract which has been entered into.

I make this hasty communication, gentlemen, in deference to your request for "an early answer," (without even retaining a copy,) and to which I could add much illustrative and explanatory.

I am, most respectfully, your obedient servant,

WILLIAM GIBBS McNEILL,

President Chesapeake and Ohio Canal Company.

To the DIRECTORS

of the Chesapeake and Ohio Canal Company.

The communication being read, on motion, it was

Ordered, That the articles of agreement submitted by the President, together with the statement made of the authority under which the same were executed by him, be referred to James M. Coale and William Price, Esqrs., with a request that they furnish a written opinion as to their legal force and effect, and whether any or what action on the part of the board is necessary to annul the same, if, after mature deliberation, it be found expedient to do so.

In accordance with the above order, the following opinion was presented :

To the President and Directors of the Chesapeake and Ohio Canal Company :

GENTLEMEN:—Your order of this day, requesting our opinion, in writing, as to the legal effect and force of certain articles of agreement executed by the President of the Chesapeake and Ohio Canal Company, in the name of the company, and under its common seal, with Thomas W. Letson and John Rutter, for the completion of the unfinished portion of the canal between dam No. 6 and Cumberland, and whether any and what action on the part of the board is necessary to annul the same, if, upon mature deliberation; it be found expedient so to do, having been communicated to us by the clerk, we have considered the said instrument, in connexion with the communication of the President setting forth the authority on which he relies, and present the following as our

OPINION.

The instrument, being signed by the President, and having affixed to it the seal of the company, and purporting in the body of it to be the act of the company, bears upon its face all those requisites which are necessary to render it, *prima facie*, a valid contract of the company.

As the charter of the Chesapeake and Ohio Canal Company, however, expressly confers upon the "President and Directors, or a majority of them assembled," the power and authority "to agree with any person or persons to cut canals," &c., although the instrument in question be signed by the President of the company, and sealed with its corporate seal, yet the courts may look behind the seal, and, if it has been affixed without the authority of a majority of the "President and Directors assembled," and that fact be made affirmatively to appear, the instrument is null and void.

It appearing, from the facts submitted to us, that no authority was given by a majority of the President and Directors of the Chesapeake and Ohio Canal Company to the President to sign or affix the corporate seal of the company to the instrument in question, and that they never agreed or assented to said contract, nor authorized the same to be made, it is perfectly competent for the board, if they see fit, now to disaffirm the same, and render it null and void.

Corporations, like natural persons, are bound only by the contracts or acts of their agents, done and made within the scope of their authority.

The President of this company has no authority *ex officio* to enter into a contract to bind the company.

The mere disaffirmance of the contract by the board will destroy it, and, if application be made, a court of equity will require it to be delivered up to be cancelled.

We cannot perceive, however, that in a case of this kind it can be necessary to resort to a cancellation, as in the event of a disaffirmance by the board it is not probable that any attempt will be made to uphold the contract, or apply the instrument to an improper purpose.

If, however, such should hereafter be the case, the interference of a court of equity could then be promptly invoked, to cause it to be delivered up to be cancelled.

W. PRICE,
J. M. COALE.

JULY 20, 1843.

The board then unanimously passed the following preamble and resolutions :

Whereas, according to the charter of the Chesapeake and Ohio Canal Company, the power "to agree with any person or persons to cut canals," &c., is conferred exclusively on the "President and Directors, or a majority of them, assembled:" And whereas it appears that the President of this company has, of his own mere motion and without authority, signed, and with the corporate seal of this company sealed a contract or articles of agreement, in the name of the Chesapeake and Ohio Canal Company, with Thomas W. Letson and John Rutter, for the completion of the unfinished portion of the canal lying between dam No. 6 and Cumberland, in the words following, to wit :

Articles of agreement made and entered into this thirteenth day of July, eighteen hundred and forty-three, by and between the Chesapeake and Ohio Canal Company of the first part, and Thomas W. Letson and John Rutter of the second part.

First, The said Thomas W. Letson and John Rutter, parties of the second part, for and in consideration of the premises hereinafter recited, have agreed, and by these presents do covenant and agree, to and with the said Chesapeake and Ohio Canal Company, that they the said parties of the second part, will forthwith enter upon the execution of the unfinished portion of Chesapeake and Ohio Canal, lying between the town of Cumberland and dam number six, and proceed with the same to the extent in value, agreeably to the estimates of the President and Chief Engineer of said company, of one hundred thousand dollars, the labor therefor, and the said expenditure, to be made under the direction of the President of said company, and in such manner, if possible, as to render the said portion of the canal navigable.

Secondly. And, in consideration of the premises aforesaid, the said Chesapeake and Ohio Canal Company, party of the first part, hereby covenant and agree, to and with the said parties of the second part, to pay them for the labor aforesaid, and the expenditure made by them as aforesaid, in ready money or in bonds of the company, to bear an interest of six per centum per annum, payable semi-annually, and the principal thereof to be paid within twenty years from the date thereof, the said payments to be made monthly from the date of actual commencement upon the work by the parties of the second part aforesaid, as the work progresses, and agreeably to the value thereof, according to the estimates as aforesaid, from time to time, and with such discount and reservations, not exceeding twenty per cent., as may be proper, in the opinion of the President and Chief Engineer as aforesaid, to ensure the faithful performance of the work by the said parties of the second part; and if said payments shall be made in bonds of the company as aforesaid, the same shall be chargeable on the revenues of the company arising from the use of its works between Cumberland and dam number six; and the said company hereby pledges and appropriates its revenues to be derived from the before-stated portions of its works to the payment of the principal and interest of the bonds which may be issued as aforesaid, subject only to all liens existing at the date of this contract.

Thirdly. And, in consideration of the premises aforesaid, the parties hereto mutually covenant and agree, to and with each other, in manner following, that is to say: The said parties of the second part hereby assume and undertake to complete the residue of the unfinished portion of the Chesapeake and Ohio Canal, lying between dam number six and Cumberland, agreeably to the plans and specifications thereof, which have been already prepared by the authority of the said company, and approved by it; the said work of

be undertaken and commenced within sixty days after the said parties of the second part shall have been required by the said company so to do, and proceed with its completion with all practicable despatch? provided the entire work shall not be required to be completed within two years from the date of its commencement, as last mentioned. And the said company, the party hereto of the first part, covenants, engages, and undertakes, to and with the parties of the second part, to pay, in manner as mentioned in the second article of this agreement, to the said parties of the second part, for their labor and expenditure to be performed and made as aforesaid, in ready money, or in bonds of the said company, to bear an interest of six per cent. per annum, payable semi-annually, and the principal thereof to be paid within twenty years from the date thereof, at the option of the said company; the value thereof, if paid in ready money, to be adjusted agreeably to the aforesaid plans and specifications, and the estimates thereon made under the authority of the said company as aforesaid, that is to say; one million five hundred and fifty thousand dollars, reduced by such sums of money as may have been paid or may be payable by the said company to the said parties of the second part, under the preceding article of this agreement; and if in bonds of the company as aforesaid, then the value shall be adjusted for the labor and expenditure performed and made in completing the said canal between dam number six and Cumberland, at the sum of two millions of dollars, subject to the same deduction as aforesaid. And the said company hereby pledges and appropriates all its revenues and effects for the payment of principal and interest of its bonds to be issued as aforesaid, subject only to all liens existing at the date of this contract. And the said party of the first part further covenants, promises, and agrees, to and with the parties of the second part, that the said company shall and will enter upon the execution of the work contemplated by this article as soon as means can be procured for the execution of the same, or the liens and priorities of the State of Maryland existing on the revenues of the company can be or are removed or postponed in favor of the bonds to be issued under the provisions of this contract.

Fourthly. And it is hereby agreed and understood, by and between the parties hereto, that whenever the said company shall determine to proceed with its works westward of Cumberland, to or in the direction of Savage river, the parties hereto of the second part shall and may exercise the right and option of assuming and undertaking the construction of the same, agreeably to the plans, specifications, and estimates, made therefor by the authority of the said company, payment to be made for the labor and expenditure thereon in ready money, or in bonds of the company, similar to those mentioned in the preceding article, at the option of the said company, and in manner and detail as mentioned in the preceding article. And if payment be made in ready money, the value of the labor and expenditure aforesaid shall be adjusted according to the cash amount of the estimate aforesaid; and if in bonds of the said company, at such larger sums as shall bear to said cash amount the same pro-

portion as established in the preceding article for the payments of the works east of Cumberland. And for the payment of principal and interest of said bonds, the said company hereby pledges and sets apart all its revenue derived from the works aforesaid westward of Cumberland, as well as the revenue accruing on its works eastward of Cumberland, from the transit and carriage of goods and commodities delivered on the said works at any point westward of Cumberland, subject only to the existing liens before mentioned: *Provided, only*, and it is hereby mutually covenanted, understood, and agreed, that, at any time after twelve months from the completion of the canal aforesaid to Cumberland, if the revenues therefrom shall not be adequate to meet the interest due and payable on the bonds issued in conformity with this agreement, the party of the second part shall have the right to require that the works westward of Cumberland shall be immediately proceeded with. And the said company hereby covenants and agrees, to and with the said parties of the second part, in that event, to proceed with the said works according to the true intent and meaning of this article, and to pay the said parties of the second part for their labor and expenditure performed and made thereon, agreeably to the stipulations aforesaid, in ready money or in bonds of the company as aforesaid, subject only to the existing liens as aforesaid.

Lastly. The parties hereto of the second part hereby covenant and agree, to and with the party of the first part, to conform, in the disposition and management of laborers and others who may be employed on the work, to the regulations and stipulations which have been heretofore always inserted in the contracts made by the said Chesapeake and Ohio Canal Company with other contractors for similar work on the said canal.

In testimony whereof, the said Chesapeake and Ohio Canal Company, by its seal and the signature of its President, and the said Thomas W. Letson and John Rutter, by their hands and seals, have in duplicate severally executed this agreement, on the day and year first hereinbefore mentioned.

WM. GIBBS McNEILL, [SEAL.]
President Ches. and O. Canal Co.

THOMAS W. LETSON, [SEAL.]
JOHN RUTTER, [SEAL.]

Witness the above signatures and seals.

M. W. SCOTT.

And whereas this board entertain decided and serious objections to said contract—

Because its terms and provisions are substantially the same as those which have been heretofore rejected by the board:

Because it “pledges and appropriates,” “*all the revenues and effects*” of the company, without reservation or restriction, for the payment of the principal and interest of the bonds that may be issued under it, subject only to existing liens, which cover only the “*nett revenues*” and property, thereby at once depriving the

company of the entire and only means which it possesses of keeping up the navigation of the canal, or paying the salaries of the officers, superintendents, lock-keepers, and other agents of the company:

Because the reservation, "not exceeding 20 per centum," provided to ensure the faithful performance of the work, is, within that sum, made entirely dependent on the opinion of the President and Chief Engineer, contrary to all former usage of the company:

Because no penalty or forfeiture is provided in case of the non-performance of the contract on the part of the said contractors, and no guaranty for its fulfilment on their part:

Because, although it is provided, in the third section of said contract, that the work therein contemplated shall be commenced by said contractors within sixty days after they shall be required to do so, yet, from the whole scope and object of said articles of agreement, as well as from the express language of the conclusion of said section, it appears that they are not to be required to enter on the execution of the same until "means can be procured for that purpose, or the liens or priorities of the State of Maryland existing on the revenues of the company can be removed or postponed in favor of the bonds to be issued under the provisions of said contract:"

Because the execution of said contract would, in the opinion of the board, increase the difficulties of procuring, if, indeed, it did not entirely prevent, a postponement of the liens and priorities of the State of Maryland:

Because there is no provision in the said contract authorising the company "to annul the same after thirty days' notice, at any time within twelve months after the date of the said contract, on the payment of one per centum damages upon the unexpended portion of the work," as recommended by the stockholders at their general meeting on the 6th of June last:

Because there is no time expressly stipulated for the completion of said work, but it is only provided that "it shall not be required to be done within two years after its commencement:":

Because, according to the provisions of said contract, the completion of the canal can in no important manner be secured or expedited by entering into the same at this time:

Because this board have entertained, and still do entertain, the opinion, which is fortified by proposals heretofore made and now on file in this office, that, if means be placed in their hands, or the liens and priorities of the State be postponed in favor of bonds to be issued for the purpose, the canal can be finished to Cumberland at a cost considerably lower than the price in said contract stipulated to be paid, and fully as early as is therein contemplated:

Because a due respect to the rights and opinions of the State of Maryland require that this company should forbear to enter into any contract predicated and dependent upon a surrender of important interests, until after said State shall have announced its consent thereto, by legislative enactment:

Because the provision in said contract, in regard to the extension of the work in the direction of Savage river, imposes obligations on the company that may at some future period prove vexatious. They are, at all events, calculated to prevent future competition, in case it be found expedient hereafter to make such extension, and impair the free action of the company:

Because the provisions of said contract, in reference to the extension of the work to the mouth of Savage, would, were the same ratified by the board, bind and oblige the company to pay for the same according to an estimate of its cost made some fifteen years ago, and confine them to a mode of the construction thereof which has long since been abandoned:

Because the said contract is not in the form which has been matured by the experience and established by the uniform usage of this company, in regard to the letting of work on the canal, and is moreover deficient in numerous provisions and details, which have been hitherto found important to the interests of the company, and which ought not to be omitted in a contract of so much magnitude as the present:

And whereas this board conceive the sum of one hundred thousand dollars, even if the same were really expended, as altogether insufficient "to render the unfinished portion of the canal navigable" in any manner, and can perceive no benefit arising from the present expenditure of that sum of money, which can for a moment outweigh their objections to the other provisions contained in said contract, as hereinbefore stated: Therefore,

Resolved, That the President of this company, in signing, in his official capacity, the said articles of agreement, purporting to have been entered into on the thirteenth day of July, 1843, "by and between the Chesapeake and Ohio Canal company of the first part, and Thomas W. Letson and John Rutter of the second part," and in affixing thereto the common corporate seal of the Chesapeake and Ohio Canal company, has assumed upon himself power and authority not granted by the charter or by laws of the company, nor authorised by any act or proceeding of this board.

Resolved, That the said articles of agreement and contract be, and the same are hereby, disaffirmed by this board, and declared to be null and void.

Resolved, That a copy of the foregoing preamble and resolutions be furnished by the Clerk to Thomas W. Letson and John Rutter, with a request that they deliver up the said articles of agreement to be cancelled.

Resolved, That the Clerk be authorised to furnish a copy of the foregoing proceedings for publication.

Resolved, That this board approve of the suggestions of the President, to exchange the bonds of the company, to the amount of

five millions, for a like amount of Maryland State bonds, if practicable, with a view to the purchase of the State's interest in the Chesapeake and Ohio Canal company; the State's mortgages on the tolls, &c., of the same being thus extinguished, and enabling the company to give preferred liens upon its tolls and other revenues to the holders of the bonds to be issued for the completion of the canal to Cumberland, and to secure to be paid the scrip and other indebtedness of the company; and that the President of the company be respectfully requested to use such efforts as may be compatible with the duties of his office to enable the company to effectuate the above objects, and to procure the means, under existing laws, to complete the canal to Cumberland."

Resolution adopted May 4, 1843.

No. 12.

FREDERICK, *December 15, 1841.*

GENTLEMEN: We, the subscribers, propose to construct all of the unfinished work on fifty miles of your canal, between dam No. 6 and Cumberland, at *fifteen per cent.* less than the estimate of your Chief Engineer, C. B. Fisk, Esq., made in June, 1841, amounting to \$1,632,000. We will enter into contract immediately, and commence the work so soon as the necessary means are provided for payment, and will finish the whole amount of work in two years from the commencement. Any portion of the work that has since been done, or that now is under contract and cannot be abandoned, may be deducted from our contract at the same ratio for which we propose to construct the balance of the work.

Address Story, Mills, & Co., No. 50, Water street, New York.

REFERENCES.

Engineers and Commissioners of Croton Aqueduct.
 Samuel Brooks, Esq., President Harlem Railroad Company.
 S. F. Fisk, Esq., President Long Island Railroad Company.
 James Bowen, Esq., President N. Y. and Erie Railroad company.
 Edward Miller, Esq., New York and Erie Railroad.
 John Noonan, Esq., Frederick.
 Miner C. Story, Hicksville, Long Island.
 Edward Mills. No. 50, Water street, New York.
 George Law, High Bridge, Croton Aqueduct.
 A. B. Mills, New York.

N. B. We would be willing to take one-half of the work upon the same terms.

STORY, MILLS, & CO.

To the PRESIDENT and DIRECTORS

of the Chesapeake and Ohio Canal Company.

CUMBERLAND, *July 25, 1843.*

GENTLEMEN: Believing, from more mature reflection, and a more particular examination into the condition of the unfinished portion of the canal between dam No. 6 and Cumberland, that it can be completed for a sum much below our former bid, we beg leave to make the following alterations in that bid:

1st. Instead of one million five hundred and forty-five thousand dollars, (\$1,545,000,) the engineer's estimate, we propose, if paid in current funds, to complete it for one million four hundred and fifty thousand dollars, (\$1,450,000.)

2d. If paid for in bonds of the company, (with preferred liens,) we will complete it for one million seven hundred and fifty thousand dollars, (\$1,750,000.)

We ask that the above be received as a part of our former proposals, and that they may be allowed to supersede any portion of said proposals with which they conflict. We further obligate ourselves to enter into contract with the Chesapeake and Ohio Canal company, predicated upon these proposals, at any time between this date and the first day of May next, (1844,) requiring only, if not entered into this fall, a reasonable postponement of the day on which it is to be completed, and a fair allowance for injuries which the canal above dam No. 6, *may* sustain from freshets previously to the acceptance of our proposals, should they be accepted at all.

Very respectfully, your obedient servants,

M. C. SPRIGG,

C. M. THRUSTON.

To the PRESIDENT AND DIRECTORS

of the Chesapeake and Ohio Canal Company.

The report of the Directors having been read by the Secretary, Col. Abert asked for the consideration of the resolution offered by him this afternoon; and the same being ordered,

Mr. Davis moved the following as a substitute:

Resolved, That the proceedings of the board of directors of the 20th of July last, disaffirming and declaring null and void the contract entered into by the President of this company with Thomas W. Letson and John Rutter, be, and the same are hereby, approved.

Resolved, That the said contract was entered into by the President without any color of authority, and in utter disregard of the provisions of the charter of the company.

Resolved, That the interests of this company require a change in the office of President.

Resolved, That General William Gibbs McNeill be, and he is hereby, removed from the office of President of the Chesapeake and Ohio Canal company.

The resolutions having been read, and some discussion had

upon them, Mr. Davis stated, as the hour was late, he would move an adjournment until to-morrow, at 8 o'clock, A. M.

Before the question of adjournment was put, the chair presented and read a letter received by him from General McNeill, dated Baltimore, July 10, 1843, addressed to him as chairman, &c., acknowledging the receipt of a copy of the proceedings of the stockholders, &c., on the 6th ultimo, denying the right of the stockholders to reduce his salary, and enclosing copies of letters addressed by Gen. McNeill to his excellency Governor Thomas, and to each of the directors, &c., informing them of his having made a contract with Letson & Rutter.

The question was now put on the motion to adjourn, and the meeting was adjourned until to-morrow, at 8 o'clock, A. M.

OFFICE CHESAPEAKE AND OHIO CANAL COMPANY,

Frederick, Thursday, August 17, 1843—8 o'clock, A. M.

Pursuant to adjournment yesterday, the stockholders of the Chesapeake and Ohio Canal Company again assembled in general meeting this day.

Governor Sprigg resumed the chair.

Present: The State of Maryland by Governor Samuel Sprigg, William U. Purnell, A. Bowie Davis, and John Van Lear, Esqrs. The United States, by Col. John J. Abert.

The Corporation of Georgetown, by John Kurtz, Esq.

The Corporation of Alexandria, by Robert H. Miller.

Walter Lenox, Esq., one of the proxy of Corporation of Washington, and sundry private stockholders—constituting a majority of the stock of the company.

General McNeill, President of the company, appeared before the meeting, and expressed his regret at not being enabled to have appeared before the meeting yesterday. That, by reason of the illness of one of his family, he was unable to leave them, so as to have secured his arrival earlier than last night. That, as he was informed that the board of directors were now in session, with the sanction of this meeting, he would for a few moments retire from this meeting, to meet the directors, and again return to this meeting.

The meeting being about to proceed to the consideration of the subject which engaged their attention at their adjournment last evening, the President of the company again appeared before them, and addressed them in explanation and vindication of his course in reference to the contract made by him, in behalf of this company, with Messrs. Letson & Rutter, and in conclusion expressed a wish that the communication (submitted by the directors to this meeting last evening) in reference to the subject should be referred to a committee, to be examined and reported upon at a future meeting.

General McNeill having concluded his remarks,

On motion of Mr. Davis, the resolutions submitted by him, as a

substitute for that offered by Colonel Abert on yesterday, were then again taken up for consideration.

On taking the question, the yeas and nays being desired, the substitute was accepted by the following vote:

Ayes.		Noes.	
The State of Maryland	10,279	The United States	2,008
Charles S. Hammond	3	The Corporation of George-	
		town - - -	508
		The Corporation of Alex-	
		andria - - -	508
		Colonel J. J. Abert	10
		John Kurtz	5
		Robert H. Miller	5
		M. St. C. Clarke	5
		Casper W. Wever	10
		John H. Alexander	2
		Walter Lenox	4
<hr/> <hr/> 10,282 <hr/> <hr/>		<hr/> <hr/> 3,065 <hr/> <hr/>	

The question then recurred upon the adoption of the substitute; and the yeas and nays being again desired, the resolutions were passed by the following vote:

Ayes.		Noes.	
The State of Maryland	10,279	The United States	2,008
Charles S. Hammond	- 3	The Corporation of George-	
John P. Ingle	- - 5	town - - -	508
		The Corporation of Alex.	
		andria - - -	508
		J. J. Aberrt	10
		John Kurtz	5
		Robert H. Miller	5
		M St. C. Clarke	5
		Casper W. Wever	10
		John H. Alexander,	2
		Walter Lenox	4
<hr/> <hr/> 10,287 <hr/> <hr/>		<hr/> <hr/> 3,065 <hr/> <hr/>	

So it was

Resolved, That the proceedings of the Board of Directors of the 20th July last, disaffirming and declaring null and void the contract entered into by the President of this company with Thomas W. Letson and John Rutter, be, and the same are hereby, approved.

Resolved, That the said contract was entered into by the President without any color of authority, and in utter disregard of the provisions of the charter of the company.

Resolved, That the interests of this company require a change in the office of President.

Resolved, That General William Gibbs McNeill be, and he is hereby, removed from the office of President of the Chesapeake and Ohio Canal Company.

Colonel Abert, in behalf of himself and others, asked and obtained leave to have entered upon the journal of proceedings of this day the following objections thereto:

1. Because the meeting has refused the customary and just course of referring the matter in controversy in these resolutions to the investigation and report of a committee.

2. Because the decision upon these resolutions is evidently made upon a one-sided report from one of the parties involved, namely, the directors—a report which can be considered in no other light than that of a justification and defence of one party.

3. Because we believe that report to contain partial and erroneous inferences, personalities, and harshness, eminently bearing upon the character and conduct of one of the parties—a report which, in fact, is a defence of the directors from themselves, and an attack upon the President, who was absent when said report was written and submitted to the stockholders.

4. Because we believe that these matters require the investigation and opinion of an impartial and disinterested tribunal, namely, that of a committee of stockholders, without which course a just and impartial exhibition of the matter before the stockholders will not be in their possession.

5. Because the report from the directors brings new matters to the knowledge of the stockholders—matters requiring deliberate and impartial investigation before a just decision upon them can be had.

6. Because, from the personal explanations made this morning (August 17,) by the President, who arrived last night, we are the more convinced that investigation and report by a committee are necessary.

7. Because there is an application from the President, which has been brought to the notice of the meeting of this day, desiring that the matter may be referred to a committee, to report at an adjourned meeting, and that he may be allowed an opportunity to be heard in his defence and justification.

JOHN J. ABERT, *U. S. Proxy*.

MW. ST. CLAIR CLARKE.

ROBERT H. MILLER, *Proxy for*
Corporation of Alexandria.

CASPER W. WEVER.

SAMUEL BURCHE.

AUGUST 17, 1843.

On motion of Mr. Purnell, it was

Resolved, That this meeting now proceed to the election of President of this company, for and during the remainder of the time for which the late incumbent (who was this day removed from office) was at first to have acted.

Resolved, That the chair appoint a committee, to consist of three persons, to receive and count the ballots, and that the polls be kept open for half an hour for receiving the ballots.

The chair appointed Messrs. Purnell, Wever and Miller, the said committee.

Mr. Davis nominated, for the office of President, Colonel James M. Coale.

The half hour having expired, the polls were closed, and the committee appointed to receive and count the ballots having performed that duty, made the following report in writing:

CHESAPEAKE AND OHIO CANAL OFFICE,

Frederick City, August 17, 1843.

The committee appointed this day to receive and count the votes given for President of the Chesapeake and Ohio Canal Company, to serve for and during the remainder of the term of the late incumbent, report, that the whole number of votes received has been ten thousand eight hundred and fourteen, all of which were cast for James M. Coale. The said James M. Coale is therefore *unanimously* elected President of the Chesapeake and Ohio Canal Company, to serve until the first Monday of June next, and until a successor shall be appointed.

WILLIAM U. PURNELL.

C. W. WEVER.

ROBERT H. MILLER.

The report was read, and the chairman announced that Colonel James M. Coale was unanimously elected President of the Chesapeake and Ohio Canal Company, until the first Monday of June next, and until a successor shall be appointed.

On motion of Mr. Davis, the chair appointed Messrs. Davis and Kurtz, a committee to wait upon Colonel James M. Coale, and inform him of his election as President of this company.

On motion, it was

Ordered, That when this meeting adjourn, to-day it stand adjourned to Thursday, the 19th day of October next, to meet at the office of the company, in the city of Frederick, Maryland.

Mr. Davis, from the committee appointed to wait upon Colonel James M. Coale, and to inform him of his election as President of this company, reported that he and his colleague had discharged the duty devolved upon them, and were authorized by Colonel Coale to say that he would accept the office of President.

On motion,

Ordered, That the usual number of copies of the proceedings of this meeting, as also that of the 6th of July last, be printed.

The meeting was then, on motion, adjourned.

SAMUEL SPRIGG, *Chairman*.

THOMAS TURNER, *Secretary*.

COMMUNICATION

FROM THE

TREASURER OF THE WESTERN SHORE,

IN ANSWER TO A

CALL FROM THE SENATE,

RELATIVE TO

PROPOSALS FOR THE SALE OF

THE PUBLIC WORKS.

ANNAPOLIS:

WILLIAM McNEIR, PRINTER.

1843.

